



Western Australia

# **Work Health and Safety Act 2020**

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# Work Health and Safety Act 2020

## Contents

<b>Part 1 — Preliminary</b>		
<b>Division 1 — Introduction</b>		
1.	Short title	2
2.	Commencement	2
<b>Division 2 — Object</b>		
3.	Object	2
<b>Division 3 — Interpretation</b>		
<b>Subdivision 1 — Definitions</b>		
4.	Definitions	4
<b>Subdivision 2 — Other important terms</b>		
4A.	Meaning of officer	10
5.	Meaning of person conducting a business or undertaking	12
6.	Meaning of supply	13
7.	Meaning of worker	14
8.	Meaning of workplace	14
9.	Notes	15
<b>Division 4 — Application of Act</b>		
10.	Act binds Crown	15
11.	Not used	15
12.	Not used	15
<b>Division 5 — Establishment of various offices and bodies</b>		
12A.	Effect of Schedule 1	15

	<b>Part 2 — Health and safety duties</b>	
	<b>Division 1 — Introductory</b>	
	<b>Subdivision 1 — Principles that apply to duties</b>	
13.	Principles that apply to duties	16
14.	Duties not transferable	16
15.	Person may have more than 1 duty	16
16.	More than 1 person can have a duty	16
17.	Management of risks	17
	<b>Subdivision 2 — What is reasonably practicable</b>	
18.	What is reasonably practicable in ensuring health and safety	17
	<b>Division 2 — Primary duty of care</b>	
19.	Primary duty of care	18
	<b>Division 3 — Further duties of persons conducting businesses or undertakings</b>	
20.	Duty of persons conducting businesses or undertakings involving management or control of workplaces	20
21.	Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces	20
22.	Duties of persons conducting businesses or undertakings that design plant, substances or structures	21
23.	Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures	23
24.	Duties of persons conducting businesses or undertakings that import plant, substances or structures	25
25.	Duties of persons conducting businesses or undertakings that supply plant, substances or structures	27
26.	Duty of persons conducting businesses or undertakings that install, construct or commission plant or structures	29

26A.	Duty of persons conducting businesses or undertakings that provide services relating to work health and safety	30
	<b>Division 4 — Duty of officers, workers and other persons</b>	
27.	Duty of officers	32
28.	Duties of workers	33
29.	Duties of other persons at the workplace	34
	<b>Division 5 — Offences and penalties</b>	
	<b>Subdivision 1 — Preliminary</b>	
30.	Terms used	34
	<b>Subdivision 2 — Industrial manslaughter</b>	
30A.	Industrial manslaughter — crime	35
	<b>Subdivision 3 — Other offences and penalties</b>	
31.	Failure to comply with health and safety duty — Category 1	36
32.	Failure to comply with health and safety duty — Category 2	38
33.	Failure to comply with health and safety duty — Category 3	38
	<b>Subdivision 4 — Exceptions</b>	
34.	Volunteers and unincorporated associations	39
	<b>Part 3 — Incident notification</b>	
35.	What is a notifiable incident	40
36.	What is a serious injury or illness	40
37.	What is a dangerous incident	41
38.	Duty to notify of notifiable incidents	42
39.	Duty to preserve incident sites	43
	<b>Part 4 — Authorisations</b>	
	<b>Division 1 — Preliminary</b>	
40.	Meaning of authorised	45
	<b>Division 2 — Requirements for authorisations</b>	
41.	Requirements for authorisation of workplaces	45
42.	Requirements for authorisation of plant or substance	45
43.	Requirements for authorisation of work	46

	<b>Division 3 — Other requirements</b>	
44.	Requirements for prescribed qualifications or experience	47
45.	Requirement to comply with conditions of authorisation	48
	<b>Division 4 — Use of automated electronic systems for functions relating to authorisations</b>	
45A.	Preliminary	48
45B.	Use of automated electronic systems under authorisation provisions	49
45C.	Replacing decision made by automated electronic system or re-exercising or re-performing authorisation function	50
	<b>Part 5 — Consultation, representation and participation</b>	
	<b>Division 1 — Consultation, cooperation and coordination between duty holders</b>	
46.	Duty to consult with other duty holders	52
	<b>Division 2 — Consultation with workers</b>	
47.	Duty to consult workers	52
48.	Nature of consultation	53
49.	When consultation is required	53
	<b>Division 3 — Health and safety representatives</b>	
	<b>Subdivision 1 — Request for election of health and safety representatives</b>	
50.	Request for election of health and safety representative	54
	<b>Subdivision 2 — Determination of work groups</b>	
51.	Determination of work groups	54
52.	Negotiations for determination of work group	55
53.	Notice to workers	56
54.	Failure of negotiations	56
	<b>Subdivision 3 — Multiple business work groups</b>	
55.	Determination of work groups of multiple businesses	57

56.	Negotiation of agreement for work groups of multiple businesses	58
57.	Notice to workers	59
58.	Withdrawal from negotiations or agreement involving multiple businesses	60
59.	Effect of Subdivision on other arrangements	60
	<b>Subdivision 4 — Election of health and safety representatives</b>	
60.	Eligibility to be elected	60
61.	Procedure for election of health and safety representatives	61
62.	Eligibility to vote	61
63.	When election not required	61
64.	Term of office of health and safety representative	62
65.	Disqualification of health and safety representatives	62
66.	Immunity of health and safety representatives	63
67.	Deputy health and safety representatives	63
	<b>Subdivision 5 — Powers and functions of health and safety representatives</b>	
68.	Powers and functions of health and safety representatives	64
69.	Powers and functions generally limited to the particular work group	67
	<b>Subdivision 6 — Obligations of person conducting business or undertaking to health and safety representatives</b>	
70.	General obligations of person conducting business or undertaking	68
71.	Exceptions from obligations under section 70(1)	70
72.	Obligation to train health and safety representatives	71
73.	Obligation to share costs if multiple businesses or undertakings	73
74.	List of health and safety representatives	73
	<b>Division 4 — Health and safety committees</b>	
75.	Health and safety committees	74
76.	Constitution of committee	75
77.	Functions of committee	76

78.	Meetings of committee	76
79.	Duties of person conducting business or undertaking	76
	<b>Division 5 — Issue resolution</b>	
80.	Parties to an issue	78
81.	Resolution of health and safety issues	79
82.	Referral of issue to regulator for resolution by inspector	79
82A.	Extension of deadline for making decision resolving issue	80
	<b>Division 6 — Right to cease or direct cessation of unsafe work</b>	
83.	Definition of cease work under this Division	80
84.	Right of worker to cease unsafe work	81
85.	Health and safety representative may direct that unsafe work cease	81
86.	Worker to notify if ceases work	82
87.	Alternative work	83
88.	Continuity of engagement of worker	83
89.	Request to regulator to appoint inspector to assist	83
89A.	Referral of issue about application of section 88 to Tribunal	83
	<b>Division 7 — Provisional improvement notices</b>	
90.	Provisional improvement notices	84
91.	Provisional improvement notice to be in writing	85
92.	Contents of provisional improvement notice	85
93.	Provisional improvement notice may include recommendations to remedy contravention	85
94.	Minor changes to provisional improvement notice	86
95.	Issue of provisional improvement notice	86
96.	Health and safety representative may cancel notice	86
97.	Display of provisional improvement notice	86
98.	Formal irregularities or defects in notice	87
99.	Offence to contravene a provisional improvement notice	87
100.	Request for review of provisional improvement notice	87
101.	Inspector to review notice	88



102.	Decision of inspector on review of provisional improvement notice	88
	<b>Division 8 — Part not to apply to prisoners</b>	
103.	Part does not apply to prisoners	89
	<b>Part 6 — Discriminatory, coercive and misleading conduct</b>	
	<b>Division 1 — Prohibition on discriminatory, coercive or misleading conduct</b>	
104.	Prohibition on discriminatory conduct	90
105.	What is discriminatory conduct	90
106.	What is a prohibited reason	91
107.	Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct	93
108.	Prohibition of coercion or inducement	93
109.	Misrepresentation	94
	<b>Division 2 — Criminal proceedings in relation to discriminatory conduct</b>	
110.	Proof of discriminatory conduct	95
111.	Order for compensation or reinstatement	95
	<b>Division 3 — Civil proceedings in relation to discriminatory or coercive conduct</b>	
112.	Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct	96
113.	Procedure for civil actions for discriminatory conduct	97
	<b>Division 4 — General</b>	
114.	General provisions relating to orders	98
115.	Prohibition on multiple actions	99
	<b>Part 7 — Not used</b>	
	<b>Division 1 — Not used</b>	
116.	Not used	100
	<b>Division 2 — Not used</b>	
117.	Not used	100
118.	Not used	100
119.	Not used	100

Contents

---

120.	Not used	100
	<b>Division 3 — Not used</b>	
121.	Not used	100
122.	Not used	100
	<b>Division 4 — Not used</b>	
123.	Not used	100
124.	Not used	100
125.	Not used	100
126.	Not used	100
127.	Not used	100
128.	Not used	100
129.	Not used	100
130.	Not used	100
	<b>Division 5 — Not used</b>	
131.	Not used	101
132.	Not used	101
133.	Not used	101
134.	Not used	101
135.	Not used	101
136.	Not used	101
137.	Not used	101
138.	Not used	101
139.	Not used	101
140.	Not used	101
	<b>Division 6 — Not used</b>	
141.	Not used	101
142.	Not used	101
143.	Not used	101
	<b>Division 7 — Not used</b>	
144.	Not used	101
145.	Not used	101
146.	Not used	101
147.	Not used	101
148.	Not used	102
	<b>Division 8 — Not used</b>	
149.	Not used	102
150.	Not used	102
151.	Not used	102

<b>Part 8 — The regulator</b>		
<b>Division 1 — Functions of regulator</b>		
152.	Functions of regulator	103
153.	Powers of regulator	104
154.	Delegation by regulator	104
<b>Division 2 — Powers of regulator to obtain information and require independent reports</b>		
155.	Powers of regulator to obtain information	104
155A.	Supplementary provisions relating to appearances	106
155B.	Power of regulator to require independent report	107
155C.	Powers to copy and retain documents	108
<b>Part 9 — Securing compliance</b>		
<b>Division 1 — Appointment of inspectors</b>		
156.	Appointment of inspectors	110
157.	Identification of inspectors	110
158.	Accountability of inspectors	110
159.	Suspension and ending of appointment of inspectors	111
<b>Division 2 — Functions and powers of inspectors</b>		
160.	Functions and powers of inspectors	111
161.	Conditions on inspectors' compliance powers	112
162.	Inspectors subject to regulator's directions	112
<b>Division 3 — Powers relating to entry</b>		
<b>Subdivision 1 — General powers of entry</b>		
163.	Powers of entry	112
164.	Notification of entry	112
165.	General powers on entry under section 163	113
166.	Persons assisting inspectors	114
<b>Subdivision 2 — Entry warrants</b>		
166A.	Terms used	115
166B.	Entry to places under entry warrant	115
167.	Applying for and issuing entry warrant	115
167A.	Use of remote communication	116
167B.	Effect and execution of entry warrant	118
167C.	General powers when executing entry warrant	119

167D.	Persons assisting inspectors	121
168.	Not used	121
169.	Not used	121
	<b>Subdivision 3 — Limitation on entry powers</b>	
170.	Places used for residential purposes	121
	<b>Division 4 — Powers relating to documents and information</b>	
171.	Power to require documents and answers to questions	122
172.	Abrogation of privilege against self-incrimination	124
173.	Warning to be given	125
174.	Powers to copy and retain documents	125
	<b>Division 5 — Seizure</b>	
175.	Power to seize things	126
176.	Inspector's power to seize dangerous workplaces and things	127
177.	Powers supporting seizure	128
178.	Receipt for seized things	129
178A.	Inspecting, examining, analysing and testing seized things	129
179.	Forfeiture of seized things	130
180.	Return of seized things	131
181.	Access to seized things	132
	<b>Division 6 — Damage</b>	
182.	Damage etc. to be minimised	132
183.	Inspector to give notice of damage	132
184.	Not used	133
	<b>Division 7 — Other matters</b>	
185.	Power to require name and address	133
186.	Inspector may take affidavits	134
187.	Not used	134
	<b>Division 8 — Offences in relation to inspectors</b>	
188.	Offence to hinder or obstruct inspector	134
189.	Offence to impersonate inspector	134
190.	Offence to assault, threaten or intimidate inspector	135

<b>Part 10 — Enforcement measures</b>		
<b>Division 1 — Improvement notices</b>		
191.	Issue of improvement notices	136
192.	Contents of improvement notice	136
193.	Compliance with improvement notice	137
194.	Extension of time for compliance with improvement notices	137
<b>Division 2 — Prohibition notices</b>		
195.	Power to issue prohibition notice	138
196.	Contents of prohibition notice	139
197.	Compliance with prohibition notice	139
<b>Division 3 — Non-disturbance notices</b>		
198.	Issue of non-disturbance notice	140
199.	Contents of non-disturbance notice	140
200.	Compliance with non-disturbance notice	141
201.	Issue of subsequent notices	141
<b>Division 4 — General requirements applying to notices</b>		
202.	Application of Division	141
203.	Notice to be in writing	141
204.	Directions in notices	141
205.	Recommendations in notice	142
206.	Changes to notice by inspector	142
207.	Regulator may vary or cancel notice	142
208.	Formal irregularities or defects in notice	142
209.	Issue and giving of notice	143
210.	Display of notice	143
<b>Division 5 — Remedial action</b>		
211.	When regulator may carry out action	144
212.	Power of regulator to take other remedial action	144
213.	Costs of remedial or other action	145
<b>Division 6 — Not used</b>		
214.	Not used	145
215.	Not used	145
<b>Part 11 — Enforceable undertakings</b>		
216.	Regulator may accept WHS undertakings	146
217.	Notice of decision and reasons for decision	146

218.	When a WHS undertaking is enforceable	146
219.	Compliance with WHS undertaking	147
220.	Contravention of WHS undertaking	147
221.	Withdrawal or variation of WHS undertaking	148
222.	Proceeding for alleged contravention	148

## **Part 12 — Review of decisions**

### **Division 1 — Reviewable decisions**

223.	Which decisions are reviewable	149
223A.	Review applications by unions	157

### **Division 2 — Internal review**

224.	Application for internal review	158
225.	Internal reviewer	158
226.	Decision of internal reviewer	158
227.	Decision on internal review	159
228.	Stays of reviewable decisions on internal reviews	159

### **Division 3 — External review**

229.	Application for external review	160
229A.	Conduct and outcome of external review	161
229B.	Stays of decisions subject to external review	162

## **Part 13 — Legal proceedings**

### **Division 1 — General matters**

229C.	Terms used	163
230.	Prosecutions	163
231.	Procedure if prosecution is not brought	164
232.	Limitation period for prosecutions	164
232A.	Admission of evidence obtained unlawfully	166
233.	Not used	167

### **Division 2 — Sentencing of offenders**

234.	Application of this Division	167
235.	Orders generally	167
236.	Adverse publicity orders	167
237.	Orders for restoration	168
238.	Work health and safety project orders	169
239.	Release on the giving of a court-ordered WHS undertaking	169
240.	Not used	170
241.	Training orders	170

242.	Offence to fail to comply with order	170
	<b>Division 3 — Not used</b>	
243.	Not used	170
	<b>Division 4 — Offences by bodies corporate</b>	
244.	Imputing conduct to bodies corporate	171
	<b>Division 5 — The Crown</b>	
	<b>Subdivision 1 — Prosecutions</b>	
244A.	Crown may be prosecuted	171
244B.	Prosecution against agent of Crown that is body corporate	171
244C.	Prosecution of Crown in other cases	172
244D.	Provisions applicable to responsible agency	172
244E.	Proceedings where Crown agency has ceased to exist	173
244F.	Penalties in proceedings against Crown	174
	<b>Subdivision 2 — Other matters</b>	
244G.	Issue of notices to Crown	174
244H.	Imputing conduct to Crown agency	175
245.	Not used	176
246.	Not used	176
247.	Not used	176
248.	Not used	176
	<b>Division 6 — Not used</b>	
249.	Not used	176
250.	Not used	176
251.	Not used	176
252.	Not used	176
253.	Not used	176
	<b>Division 7 — Not used</b>	
254.	Not used	176
255.	Not used	176
256.	Not used	176
257.	Not used	176
258.	Not used	176
259.	Not used	177
260.	Not used	177
261.	Not used	177
262.	Not used	177

263.	Not used	177
264.	Not used	177
265.	Not used	177
266.	Not used	177
	<b>Division 8 — Civil liability not affected by this Act</b>	
267.	Civil liability not affected by this Act	177
	<b>Part 14 — General</b>	
	<b>Division 1 — General provisions</b>	
268.	Offence to give false or misleading information	178
269.	Act does not affect legal professional privilege	179
270.	Immunity from liability	179
271.	Confidentiality of information	179
272.	No contracting out	181
272A.	No insurance or other indemnities against fines	181
273.	Person not to levy workers	182
	<b>Division 2 — Codes of practice</b>	
274.	Approved codes of practice	182
275.	Use of codes of practice in proceedings	184
	<b>Division 3 — Regulation-making powers</b>	
276.	Regulation-making powers	184
	<b>Division 4 — Review of Act</b>	
277.	Operation of Act to be reviewed every 5 years	186
	<b>Part 15 — Repeals and consequential amendments</b>	
	<b>Division 1 — Occupational safety and health legislation</b>	
278.	<i>Occupational Safety and Health Act 1984</i> repealed	187
279.	<i>Occupational Safety and Health Regulations 1996</i> repealed	187
	<b>Division 2 — Mines safety and inspection legislation</b>	
	<b>Subdivision 1 — <i>Mines Safety and Inspection Act 1994</i> amended</b>	
280.	Act amended	187
281.	Section 3 deleted	187



282.	Section 4 amended	187
283.	Section 4A deleted	190
284.	Section 6A deleted	191
285.	Section 7 amended	191
286.	Parts 2 to 8 deleted	191
287.	Sections 94 and 95 deleted	191
288.	Section 96A deleted	191
289.	Sections 98 to 99A deleted	191
290.	Section 100 amended	191
291.	Sections 100A and 101 deleted	191
292.	Part 9 Divisions 2 and 3 deleted	192
293.	Sections 102A and 103 deleted	192
294.	Section 104 amended	192
295.	Section 105A amended	193
296.	Section 105AB amended	193
297.	Sections 105 to 110 deleted	193
	<b>Subdivision 2 — Mines Safety and Inspection Regulations 1995 repealed</b>	
298.	<i>Mines Safety and Inspection Regulations 1995</i> repealed	194
	<b>Division 3 — Petroleum and geothermal energy legislation</b>	
	<b>Subdivision 1 — Petroleum and Geothermal Energy Resources Act 1967 amended</b>	
299.	Act amended	194
300.	Section 5 amended	194
301.	Section 7AA deleted	194
302.	Section 112A amended	194
303.	Section 119 amended	195
304.	Section 126A amended	195
305.	Part IIIA deleted	195
306.	Section 153 amended	195
307.	Schedule 1 deleted	195
	<b>Subdivision 2 — Petroleum and Geothermal Energy Safety Levies Act 2011 amended</b>	
308.	Act amended	195
309.	Long title amended	196
310.	Section 3 amended	196
311.	Sections 3A to 3E inserted	200
	3A. Diving operation	200

	3B.	DSMS	201	
	3C.	Geothermal energy operation	201	
	3D.	Petroleum operation	203	
	3E.	Safety case	205	
312.		Part 2 replaced		206
		<b>Part 2 — Safety levies</b>		
		<b>Division 1 — Safety case levy</b>		
	4.	Safety case levy payable	206	
	5.	Liability for payment of safety case levy	206	
	6.	Amount of safety case levy	206	
		<b>Division 2 — DSMS levy</b>		
	7.	DSMS levy payable	207	
	8.	Liability for payment of DSMS levy	207	
	9.	Amount of DSMS levy	207	
313.		Section 10 amended		207
314.		Section 11 amended		208
315.		Section 12 amended		208
316.		Section 13 amended		208
317.		Section 14 amended		209
318.		Section 15 amended		209
319.		Section 16 amended		209
320.		Section 18 amended		209
321.		Section 21 amended		210
322.		Section 22 amended		210
323.		Section 26 amended		210
		<b>Subdivision 3 — <i>Petroleum Pipelines Act 1969</i></b>		
		<b>amended</b>		
324.		Act amended		211
325.		Section 4 amended		211
326.		Section 5AA deleted		211
327.		Section 32 replaced		211
	32.	Certain local laws not to apply to licensed pipelines	211	
328.		Section 36 amended		212
329.		Part IVA deleted		212
330.		Section 63 amended		212
331.		Section 66BB amended		212
332.		Section 67 amended		212
333.		Schedule 1 deleted		212

<b>Subdivision 4 — Petroleum (Submerged Lands)</b>		
<b>Act 1982 amended</b>		
334.	Act amended	213
335.	Section 4 amended	213
336.	Section 4A inserted	213
	4A. Meaning of facility and offshore petroleum operation	213
337.	Part IIA deleted	216
338.	Section 97 amended	216
339.	Section 119 amended	216
340.	Section 137A amended	217
341.	Part IIIA deleted	217
342.	Section 152 amended	217
343.	Schedule 3 amended	217
344.	Schedule 5 deleted	217
<b>Subdivision 5 — Various regulations repealed</b>		
345.	Regulations under <i>Petroleum and Geothermal Energy Resources Act 1967</i> repealed	217
346.	Regulations under <i>Petroleum and Geothermal Energy Safety Levies Act 2011</i> repealed	218
347.	Regulations under <i>Petroleum Pipelines Act 1969</i> repealed	218
348.	Regulations under <i>Petroleum (Submerged Lands) Act 1982</i> repealed	218
<b>Division 4 — Other consequential amendments</b>		
<b>Subdivision 1 — Building and Construction Industry Training Fund and Levy Collection Act 1990 amended</b>		
349.	Act amended	218
350.	Section 8 amended	219
<b>Subdivision 2 — Constitution Acts Amendment Act 1899 amended</b>		
351.	Act amended	219
352.	Schedule V amended	219
<b>Subdivision 3 — Fair Trading Act 2010 amended</b>		
353.	Act amended	219
354.	Schedule 1 amended	219

	<b>Subdivision 4 — <i>Health (Miscellaneous Provisions) Act 1911</i> amended</b>	
355.	Act amended	220
356.	Section 246B amended	220
	<b>Subdivision 5 — <i>Industrial Relations Act 1979</i> amended</b>	
357.	Act amended	220
358.	Section 7 amended	220
359.	Section 8 amended	221
360.	Section 16 amended	221
361.	Section 49I amended	222
362.	Section 113 amended	222
	<b>Subdivision 6 — <i>Local Government Act 1995</i> amended</b>	
363.	Act amended	222
364.	Section 5.40 amended	222
	<b>Subdivision 7 — <i>Public Sector Management Act 1994</i> amended</b>	
365.	Act amended	223
366.	Section 8 amended	223
367.	Section 29 amended	223
	<b>Subdivision 8 — <i>Workers' Compensation and Injury Management Act 1981</i> amended</b>	
368.	Act amended	223
369.	Section 47 deleted	223
370.	Section 48 amended	224
371.	Section 95 amended	224
372.	Section 100B amended	224
	<b>Part 16 — Transitional provisions</b>	
	<b>Division 1 — Preliminary</b>	
373.	Terms used	225
374.	Application of <i>Interpretation Act 1984</i> not affected	225
375.	Continued application of enactments	225
376.	Transitional regulations	226

	<b>Division 2 — General saving in relation to certain matters</b>	
377.	Enactments to continue to apply in relation to certain matters occurring before commencement day	228
	<b>Division 3 — Office holders and bodies</b>	
378.	WorkSafe Commissioner	229
379.	Chief Inspector of Mines	229
380.	Members of Work Health and Safety Commission	230
381.	First annual report of Work Health and Safety Commission	231
382.	Continuation of Mining Industry Advisory Committee	231
383.	Continuation of other advisory committees	232
	<b>Division 4 — Health and safety duties</b>	
	<b>Subdivision 1 — Designers</b>	
384.	Section 22 applies only if designing starts on or after commencement day	232
385.	Continued application of repealed enactments relating to designers	232
	<b>Subdivision 2 — Manufacturers</b>	
386.	Plant, substance or structure manufactured in batch	233
387.	Section 23 applies only if manufacturing starts on or after commencement day	233
388.	Continued application of repealed enactments relating to manufacturers	234
	<b>Subdivision 3 — Importers</b>	
389.	Section 24 not to apply if importation process starts before commencement day	235
390.	Continued application of repealed enactments relating to importers	235
	<b>Subdivision 4 — Suppliers</b>	
391.	Start of supply	237
392.	Section 25 not to apply if supply started before commencement day	237
393.	Continued application of repealed enactments relating to suppliers	237

	<b>Subdivision 5 — Persons who install, construct or commission plant or structures</b>	
394.	Section 26 not to apply if installing, constructing or commissioning occurs before commencement day	238
395.	Continued application of repealed enactments relating to persons who install or construct plant or structures	239
	<b>Division 5 — Health and safety representatives</b>	
	<b>Subdivision 1 — Preliminary</b>	
396.	Terms used	240
	<b>Subdivision 2 — Main provisions</b>	
397.	Safety and health representatives elected before commencement day	240
398.	Elections in process before commencement day	242
399.	Disqualifications	243
400.	Functions and powers under repealed enactments	243
	<b>Division 6 — Health and safety committees</b>	
	<b>Subdivision 1 — Preliminary</b>	
401.	Term used	244
	<b>Subdivision 2 — Main provisions</b>	
402.	Safety and health committees in place before commencement day	244
403.	Process to establish safety and health committee started before commencement day	245
	<b>Division 7 — Issue resolution</b>	
404.	Part 5 Division 5 to apply to unresolved issues arising before commencement day	245
405.	Continued application of enactments relating to issue resolution	246
	<b>Division 8 — The regulator</b>	
406.	Continuing powers and functions under OSHA	246
407.	Continuing powers and functions under MSIA	246
408.	Continuing powers and functions under petroleum and geothermal energy legislation	247
409.	Delegation	247
	<b>Division 9 — Inspectors</b>	
410.	Inspectors under OSHA	248

411.	Inspectors under MSIA	249
412.	Inspectors under PGERA	249
413.	Inspectors under PPA	251
414.	Inspectors under P(SL)A	252
415.	Application of sections 161 and 162	253
	<b>Division 10 — Legal proceedings</b>	
416.	Jurisdiction of Occupational Safety and Health Tribunal to be exercised by Tribunal	253
417.	Jurisdiction of safety and health magistrates to be exercised by health and safety magistrates	254
	<b>Division 11 — Other matters</b>	
418.	Notifiable incidents	255
419.	Independent studies at mines	255
420.	Codes of practice	255
421.	Protections from personal liability	255
	<b>Division 12 — Levies</b>	
	<b>Subdivision 1 — Mines safety and inspection levy</b>	
422.	Administration costs	256
423.	<i>Mines Safety and Inspection Levy Regulations 2010</i>	256
	<b>Subdivision 2 — Petroleum and geothermal energy safety levies</b>	
424.	Administration costs	257
425.	<i>Petroleum and Geothermal Energy Safety Levies Act 2011</i> to continue to apply to past levy periods	257
	<b>Schedule 1 — Various offices and bodies</b>	
	<b>Division 1 — WorkSafe Commissioner</b>	
1.	Appointment of WorkSafe Commissioner	258
2.	Functions of WorkSafe Commissioner and relationship with Minister and WHS department	258
3.	Vacation of office of WorkSafe Commissioner	259
4.	Acting WorkSafe Commissioner	260
	<b>Division 2 — Chief Inspector of Mines and Chief Inspector Petroleum Safety</b>	
5.	Appointment of Chief Inspector of Mines and Chief Inspector Petroleum Safety	260

6.	Functions of Chief Inspector of Mines and Chief Inspector Petroleum Safety	261
7.	Vacation of office of Chief Inspector of Mines or Chief Inspector Petroleum Safety	261
8.	Acting Chief Inspector of Mines or Acting Chief Inspector Petroleum Safety	262
	<b>Division 3 — Work Health and Safety Commission</b>	
	<b>Subdivision 1 — Preliminary</b>	
9.	Terms used	262
	<b>Subdivision 2 — Main provisions</b>	
10.	Establishment of Work Health and Safety Commission	263
11.	Deputy chairperson	264
12.	Vacation of office of appointed members	265
13.	Acting members	265
14.	Terms and conditions of appointed members	266
15.	Leave of absence	266
16.	Casual vacancies	267
17.	Meetings of Commission	267
18.	Functions of Commission	268
19.	Advisory committees	270
20.	Annual report	270
21.	Staff to assist Commission	271
	<b>Division 4 — Mining and Petroleum Advisory Committee</b>	
	<b>Subdivision 1 — Preliminary</b>	
22.	Terms used	271
	<b>Subdivision 2 — Main provisions</b>	
23.	Establishment of Mining and Petroleum Advisory Committee	271
24.	Functions of Committee	272
25.	Annual report and staff	272
	<b>Division 5 — Work Health and Safety Tribunal</b>	
	<b>Subdivision 1 — Preliminary</b>	
26.	Terms used	273



	<b>Subdivision 2 — Main provisions</b>	
27.	Establishment of Work Health and Safety Tribunal	273
28.	Jurisdiction to be exercised by commissioner with requisite qualifications	273
29.	Practice, procedure and appeals	274
30.	Conciliation	275
31.	Certain matters to be heard together	276

**Schedule 2 — Regulation-making powers**

1.	Duties	278
2.	Incidents	278
3.	Plant, substances or structures	278
4.	Protection and welfare of workers	279
5.	Hazards and risks	279
6.	Records and notices	279
7.	Authorisations	280
8.	Work groups	280
9.	Health and safety committees and health and safety representatives	280
10.	Issue resolution	281
11.	Identification of inspectors	281
12.	Forfeiture	281
13.	Review of decisions	281

**Notes**

	Compilation table	282
	Other notes	282

**Defined terms**



## **Work Health and Safety Act 2020**

**An Act —**

- **to make provision about, and in connection with —**
  - **the health and safety of workers; and**
  - **health and safety at workplaces; and**
  - **risks to health and safety arising from work;**
- and**
- **to make consequential and related amendments to, and repeals of, various written laws; and**
- **for related purposes.**

## **Part 1 — Preliminary**

### **Division 1 — Introduction**

#### **1. Short title**

This is the *Work Health and Safety Act 2020*.

#### **2. Commencement**

- (1) This Act comes into operation as follows —
  - (a) Part 1, other than Divisions 2 to 5 — on the day on which this Act receives the Royal Assent (*assent day*);
  - (b) Part 14, other than Divisions 1 to 3 — on the day after assent day;
  - (c) the rest of the Act — on a day fixed by proclamation.
- (2) However, if no day is fixed under subsection (1)(c) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends.

### **Division 2 — Object**

#### **3. Object**

- (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by —
  - (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work; and
  - (b) providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety; and
  - (c) fostering cooperation and consultation between, and providing for the participation of, the following persons in the formulation and implementation of work health

and safety standards to current levels of technical knowledge and development and encouraging those persons to take a constructive role in promoting improvements in work health and safety practices —

- (i) workers;
- (ii) persons conducting businesses or undertakings;
- (iii) unions;
- (iv) employer organisations;

and

- (d) promoting the provision of advice, information, education and training in relation to work health and safety; and
  - (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
  - (f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
  - (g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and
  - (h) providing for the formulation of policies, and for the coordination of the administration of laws, relating to work health and safety; and
  - (i) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in the State.
- (2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety

and welfare from hazards and risks arising from work as is reasonably practicable.

Notes for this section:

1. This Act is based on the Model Work Health and Safety Bill (21 March 2016 version) prepared for, and approved by, the Council of Australian Governments and contains modifications of that model Bill for this State.
2. The numbering of Parts, Divisions and sections in this Act generally (but not always) corresponds to the numbering of Parts, Divisions and sections in the model Bill. To facilitate this correspondence —
  - (a) some Part, Division and section numbers are included in this Act although they are not used for this State; and
  - (b) alphanumeric numbers are used in this Act for some sections that are inserted for this State.
3. Alphanumeric numbering used in the model Bill is also used in this Act.

### **Division 3 — Interpretation**

#### **Subdivision 1 — Definitions**

#### **4. Definitions**

In this Act —

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

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

*Category 1 offence* — see section 31;

*Category 2 offence* — see section 32;

*Category 3 offence* — see section 33;

*chief executive*, in relation to a Crown agency, means the person who is responsible for the day-to-day administration of the Crown agency;

*Chief Inspector of Mines* — see Schedule 1 Division 2;

*Chief Inspector Petroleum Safety* — see Schedule 1 Division 2;

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

***condition*** includes limitation and restriction;

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

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

***corresponding WHS law*** means a law, or a part of a law, of the Commonwealth, or of another State or a Territory, that is prescribed as a corresponding WHS law;

***covert operation*** means the performance of a function, or the exercise of a power, of a police officer in circumstances where —

- (a) a covert operation is undertaken by WA Police for the purpose of obtaining information about criminal activity; and
- (b) the performance of the function, or the exercise of the power, is not reasonably practicable without exposing a police officer to a serious risk to the police officer's health or safety emanating from an immediate or imminent exposure to a hazard; and
- (c) unless the performance of the function, or the exercise of the power, is secret or confidential, it would be likely that —
  - (i) the effectiveness of the performance of the function, or the exercise of the power, is reduced; or
  - (ii) a person is exposed to the danger of physical harm arising from the actions of another person;

***Crown agency*** means —

- (a) a department of the Public Service; or

- (b) WA Police; or
- (c) any other agency of the Crown that is not a body corporate;

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

***dangerous operation*** means the performance of a function, or the exercise of a power, of a police officer in circumstances where the performance of that function, or the exercise of that power —

- (a) is reasonably necessary; and
- (b) is not reasonably practicable without exposing a police officer to a serious risk to the police officer's health or safety emanating from an immediate or imminent exposure to a hazard;

***demolition*** includes deconstruction;

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

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

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

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

***document*** includes anything that falls within 1 or more of the following paragraphs —

- (a) a record of information, irrespective of how the information is recorded or stored or able to be recovered;
- (b) a thing on which there is writing;
- (c) a map, plan, graph, drawing or photograph;
- (d) a thing on which there are marks, figures, symbols or perforations that have a meaning for persons qualified to interpret them;



- (e) a thing from which images, sounds or writings can be reproduced with or without the aid of anything else;
- (f) a thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

**eligible person**, in Part 12 — see section 223;

**employer organisation** means an association or organisation of employers;

**handling** includes transport;

**health** means physical and psychological health;

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

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

**import** means to bring into the State, whether from outside Australia or otherwise;

**industrial manslaughter** — see section 30A;

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

**internal reviewer** means —

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

**IR entry authority** means —

- (a) an authority issued under the *Industrial Relations Act 1979* Part II Division 2G; or
- (b) a permit issued under the *Fair Work Act 2009* (Commonwealth) section 512;

**local government member** means —

- (a) a member of the council of a local government, or of the council of a regional local government, acting in that capacity; or

- (b) a member of the governing body of a regional subsidiary acting in that capacity, if the member was appointed to the governing body in their capacity as a member of the council of a local government involved in the formation of the regional subsidiary;

**notifiable incident** — see section 35;

**officer** — see section 4A;

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

**plant** includes —

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

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

**provide**, in relation to a document, includes produce;

**public corporation** means —

- (a) a local government, regional local government or regional subsidiary; or
- (b) any other body corporate established or continued for a public purpose under a written law;

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

**regulator** means the WorkSafe Commissioner — see Schedule 1 Division 1;

**remuneration** has the meaning given in the *Salaries and Allowances Act 1975* section 4(1);

**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 the worker;

**reviewable decision**, in Part 12 — see section 223;

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

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

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

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

**supply** — see section 6;

**Tribunal** means the Work Health and Safety Tribunal — see Schedule 1 Division 5;

**union** means —

- (a) an employee organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth); or
- (b) an organisation of employees, or an association of employees, registered under the *Industrial Relations Act 1979*;

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

**WA Police** means the Police Force of Western Australia provided for by the *Police Act 1892*;

**WHS authority** means any of the following —

- (a) the Minister;
- (b) the WHS department or a person working in the WHS department;

- (c) an inspector or a person assisting an inspector under section 166, 167B(7) or 167D;
- (d) the holder, or a person acting as the holder, of an office under Schedule 1 Division 1 or 2;
- (e) a body established or appointed under Schedule 1 Division 3 or 4;
- (f) a member, or a person acting as a member, of a body established or appointed under Schedule 1 Division 3 or 4;
- (g) any other person engaged in the administration of this Act;

**WHS department** means the department of the Public Service principally assisting in the administration of this Act;

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

**worker** — see section 7;

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

**Work Health and Safety Commission** — see Schedule 1 Division 3;

**workplace** — see section 8.

#### **Subdivision 2 — Other important terms**

#### **4A. Meaning of officer**

- (1) In this Act —

**officer** —

- (a) means —
  - (i) an officer within the meaning of the *Corporations Act 2001* (Commonwealth) section 9 other than a partner in a partnership; or
  - (ii) an officer of the Crown within the meaning of subsection (2); or

- (iii) an officer of a public corporation within the meaning of subsection (3);
- but
- (b) does not include —
  - (i) the Governor acting in that capacity; or
  - (ii) a Minister of a State or Territory, or of the Commonwealth, acting in that capacity; or
  - (iii) a local government member.
- (2) Each of the following persons is taken to be an officer of the Crown for the purposes of this Act —
  - (a) in relation to the business or undertaking of a body corporate that is an agent of the Crown, any person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking;
  - (b) in relation to the business or undertaking of a Crown agency, the chief executive;
  - (c) in relation to the business or undertaking of a Crown agency, any person (other than the chief executive) —
    - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking; and
    - (ii) who is, within the organisational structure of the Crown agency, directly responsible to the chief executive.
- (3) A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public corporation is taken to be an officer of the public corporation for the purposes of this Act.

**5. Meaning of person conducting a business or undertaking**

- (1) For the purposes of this Act, a person conducts a business or undertaking —
  - (a) whether the person conducts the business or undertaking alone or with others; and
  - (b) whether or not the business or undertaking is conducted for profit or gain.
- (2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.
- (3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.
- (4) An individual does not conduct a business or undertaking to the extent that the individual is engaged solely as a worker in, or as an officer of, that business or undertaking.
- (5) A local government member does not conduct a business or undertaking.
- (6) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.
- (7) A volunteer association does not conduct a business or undertaking for the purposes of this Act.
- (8) A strata company that is responsible for any common areas used only for residential purposes may be taken not to be a person conducting a business or undertaking in relation to those premises.
- (9) Subsection (8) does not apply if the strata company engages any worker as an employee.

(10) In this section —

***strata company*** means a body corporate established under the *Strata Titles Act 1985* section 14 on registration of a strata titles scheme;

***volunteer association*** means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

## 6. Meaning of supply

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

possession of the plant, substance or structure is taken for the purposes of this Act to have supplied the plant, substance or structure to the financier's customer.

**7. Meaning of worker**

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

**8. Meaning of workplace**

- (1) A **workplace** is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.



(2) In this section —

*place* includes —

- (a) a vehicle, vessel, aircraft or other mobile structure; and
- (b) any waters and any installation on land, on the bed of any waters or floating on any waters.

**9. Notes**

A note in this Act, other than a note in Part 15, forms part of this Act.

**Division 4 — Application of Act**

**10. Act binds Crown**

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

**11. Not used**

**12. Not used**

**Division 5 — Establishment of various offices and bodies**

**12A. Effect of Schedule 1**

Schedule 1 establishes, and makes provision about, the following offices and bodies —

- (a) the WorkSafe Commissioner (Division 1);
- (b) the Chief Inspector of Mines and the Chief Inspector Petroleum Safety (Division 2);
- (c) the Work Health and Safety Commission (Division 3);
- (d) the Mining and Petroleum Advisory Committee (Division 4);
- (e) the Work Health and Safety Tribunal (Division 5).

## **Part 2 — Health and safety duties**

### **Division 1 — Introductory**

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

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

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

Note for this section:

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

#### **14. Duties not transferable**

A duty cannot be transferred to another person.

#### **15. Person may have more than 1 duty**

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

#### **16. More than 1 person can have a duty**

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



- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

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

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

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

- (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
  - (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
  - (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.
- (4) If —
- (a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and
  - (b) the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available,

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

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

Note for this subsection:

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

Note for this section:

Health means physical and psychological health — see section 4.

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

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

(1) In this section —

*person with management or control of a workplace* means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace but does not include —

- (a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or
- (b) a prescribed person.

(2) The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

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

(1) In this section —

*person with management or control of fixtures, fittings or plant at a workplace* means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control of fixtures, fittings or plant, in whole or in part, at a workplace, but does not include —

- (a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or
- (b) a prescribed person.

- (2) The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

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

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

**Work Health and Safety Act 2020**

**Part 2** Health and safety duties

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

**s. 22**

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(iii) the manufacture, assembly or use of the structure for a purpose for which it was designed or the proper demolition or disposal of the structure;

or

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

Note for this subsection:

For the purposes of paragraph (e), a reasonably foreseeable activity is, for example, inspection, operation, cleaning, maintenance or repair of plant.

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



carry out, any of the activities referred to in subsection (2)(a) to (e).

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

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

**Work Health and Safety Act 2020**

**Part 2** Health and safety duties

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

**s. 23**

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(iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure;

or

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

Note for this subsection:

For the purposes of paragraph (e), a reasonably foreseeable activity is, for example, inspection, operation, cleaning, maintenance or repair of plant.

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

carry out, any of the activities referred to in subsection (2)(a) to (e).

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

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

**Work Health and Safety Act 2020**

**Part 2** Health and safety duties

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

**s. 24**

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(iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure;

or

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

Note for this subsection:

For the purposes of paragraph (e), a reasonably foreseeable activity is, for example, inspection, operation, cleaning, maintenance or repair of plant.

(3) The importer must —

- (a) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2); or
- (b) ensure that the calculations, analysis, testing or examination have been carried out.

(4) The importer must give adequate information to each person to whom the importer provides the plant, substance or structure concerning —

- (a) each purpose for which the plant, substance or structure was designed or manufactured; and
- (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
- (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).

- (5) The importer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

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

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

**Work Health and Safety Act 2020**

**Part 2** Health and safety duties

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

**s. 25**

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

or

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

Note for this subsection:

For the purposes of paragraph (e), a reasonably foreseeable activity is, for example, inspection, operation, cleaning, maintenance or repair of plant.

- (3) The supplier must —
  - (a) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2); or
  - (b) ensure that the calculations, analysis, testing or examination have been carried out.
- (4) The supplier must give adequate information to each person to whom the supplier supplies the plant, substance or structure concerning —
  - (a) each purpose for which the plant, substance or structure was designed or manufactured; and
  - (b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and

- (c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).
- (5) The supplier, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

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

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

**26A. Duty of persons conducting businesses or undertakings that provide services relating to work health and safety**

(1) In this section —

*relevant use*, in relation to WHS services, means a use of the WHS services for a purpose for which they are provided;  
*services* includes any products or other things provided as part of services;

*use* includes the following —

- (a) implement;
- (b) rely upon;

*WHS services* —

- (a) means services that relate to work health and safety; but
- (b) does not include the following —
  - (i) services provided under this Act by a WHS authority, a health and safety representative (or deputy) or a health and safety committee;
  - (ii) services provided under a corresponding WHS law by a person or body corresponding to a WHS authority, a health and safety representative (or deputy) or a health and safety committee;
  - (iii) emergency services provided by police officers, or other emergency services personnel, in situations where there is a serious risk to the health or safety of any individual;
  - (iv) services that are subject to legal professional privilege or that would be subject to legal professional privilege but for that privilege having been waived.

Note for this definition:

For the purposes of paragraph (a), the services could be, for example, providing any of the following relating to work health and safety —

- (a) recommendations or other advice;



- (b) testing or analysis;
  - (c) other information or documents, for example, a report, plan, programme, strategy, guideline or manual;
  - (d) a training or other educational course.
- (2) This section applies to a person (the **WHS service provider**) who conducts a business or undertaking that provides WHS services —
- (a) to a person who conducts another business or undertaking; and
  - (b) that are to be used, or could reasonably be expected to be used, at, or in relation to, a workplace at which work is carried out for the other business or undertaking.
- (3) The WHS service provider must ensure, so far as is reasonably practicable, that the WHS services are provided so that any relevant use of them at, or in relation to, a workplace of the kind referred to in subsection (2)(b) will not put at risk the health and safety of persons who are at the workplace.

Note for this subsection:

The following are examples of cases in which a relevant use of WHS services might put at risk the health and safety of persons who are at a workplace —

- (a) a recommendation that is made on how to eliminate risks to health and safety at a workplace is inadequate for that purpose so that when the recommendation is implemented at the workplace the risks are not eliminated;
- (b) the testing of plant at a workplace for risks to health and safety fails to identify existing risks so that, when the plant is subsequently operated in reliance on the testing, workers at the workplace are exposed to those existing risks;
- (c) a training course for workers about how they can avoid being exposed to risks to their health and safety is inadequate for that purpose so that, when the workers put their training into practice at their workplaces, they are still exposed to the risks.

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

### **27. Duty of officers**

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

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

Note for this subsection:

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

- (a) reporting notifiable incidents;
- (b) consulting with workers;
- (c) ensuring compliance with notices issued under this Act;
- (d) ensuring the provision of training and instruction to workers about work health and safety;
- (e) ensuring that health and safety representatives receive their entitlements to training.

## **28. Duties of workers**

While at work, a worker must —

- (a) take reasonable care for the worker's own health and safety; and

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

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

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

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

**Division 5 — Offences and penalties**

**Subdivision 1 — Preliminary**

**30. Terms used**

In this Division —

*conduct* includes an act or omission;



- (3) An officer of a person (the *PCBU*) commits a crime (*industrial manslaughter*) if —
- (a) the PCBU has a health and safety duty as a person conducting a business or undertaking; and
  - (b) the PCBU engages in conduct that causes the death of an individual; and
  - (c) the PCBU's conduct constitutes a failure to comply with the PCBU's health and safety duty; and
  - (d) the PCBU's conduct —
    - (i) is attributable to any neglect on the part of the officer; or
    - (ii) is engaged in with the officer's consent or connivance;
- and
- (e) the officer engages in the officer's conduct referred to in paragraph (d)(i) or (ii) —
    - (i) knowing that the PCBU's conduct is likely to cause the death of, or serious harm to, an individual; and
    - (ii) in disregard of that likelihood.

Penalty for this subsection: imprisonment for 20 years and a fine of \$5 000 000.

- (4) A person charged with a crime under subsection (3) may be convicted of a Category 1 offence, a Category 2 offence or a Category 3 offence.

### **Subdivision 3 — Other offences and penalties**

#### **31. Failure to comply with health and safety duty — Category 1**

- (1) A person commits an offence (a *Category 1 offence*) if —
- (a) the person has a health and safety duty as a person conducting a business or undertaking; and

- (b) the person fails to comply with that duty; and
- (c) the failure causes the death of, or serious harm to, an individual.

Penalty for this subsection:

- (a) for an individual, imprisonment for 5 years and a fine of \$680 000;
  - (b) for a body corporate, a fine of \$3 500 000.
- (2) A person commits an offence (a *Category 1 offence*) if —
- (a) the person has a health and safety duty otherwise than as a person conducting a business or undertaking; and
  - (b) the person fails to comply with that duty; and
  - (c) the failure causes the death of, or serious harm to, an individual.

Penalty for this subsection:

- (a) for an individual, if the offence is committed by the individual as an officer of a person conducting a business or undertaking, imprisonment for 5 years and a fine of \$680 000;
  - (b) for an individual, if paragraph (a) does not apply, imprisonment for 5 years and a fine of \$340 000;
  - (c) for a body corporate, a fine of \$3 500 000.
- (3) For the purposes of subsections (1)(c) and (2)(c), the failure causes *serious harm* to an individual if it causes an injury or illness to the individual that —
- (a) endangers, or is likely to endanger, the individual's life;  
or
  - (b) results in, or is likely to result in, permanent injury or harm to the individual's health.
- (4) A person charged with a Category 1 offence may be convicted of a Category 2 offence or a Category 3 offence.

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

- (1) A person commits an offence (a *Category 2 offence*) if —
- (a) the person has a health and safety duty; and
  - (b) the person fails to comply with that duty; and
  - (c) the failure exposes an individual to a risk of death or of injury or harm to the individual's health.

Penalty for this subsection:

- (a) for an individual, if the offence is committed by the individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking, a fine of \$350 000;
  - (b) for an individual, if paragraph (a) does not apply, a fine of \$170 000;
  - (c) for a body corporate, a fine of \$1 800 000.
- (2) A person charged with a Category 2 offence may be convicted of a Category 3 offence.

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

A person commits an offence (a *Category 3 offence*) if —

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

Penalty:

- (a) for an individual, if the offence is committed by the individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking, a fine of \$120 000;
- (b) for an individual, if paragraph (a) does not apply, a fine of \$55 000;
- (c) for a body corporate, a fine of \$570 000.



#### **Subdivision 4 — Exceptions**

#### **34. Volunteers and unincorporated associations**

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

## **Part 3 — Incident notification**

### **35. What is a notifiable incident**

In this Act —

*notifiable incident* means —

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

### **36. What is a serious injury or illness**

(1) In this Part —

*serious injury or illness*, of a person, means an injury or illness —

- (a) that requires the person to have immediate treatment as an in-patient in a hospital; or
- (b) that requires the person to have immediate treatment for —
  - (i) the amputation of any part of the person's body; or
  - (ii) a serious head injury; or
  - (iii) a serious eye injury; or
  - (iv) a serious burn; or
  - (v) the separation of the person's skin from an underlying tissue (such as degloving or scalping); or
  - (vi) a spinal injury; or
  - (vii) the loss of a bodily function; or
  - (viii) serious lacerations;or

- (c) that requires the person to have treatment by a medical practitioner within 48 hours of exposure to a substance; or
- (d) that occurs in a remote location and requires the person to be transferred urgently to a medical facility for treatment; or
- (e) that, in the opinion of a medical practitioner, is likely to prevent the person from being able to do the person's normal work for at least 10 days after the day on which the injury or illness occurs,

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

- (2) In subsection (1) —

***medical practitioner*** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession.

### 37. What is a dangerous incident

In this Part —

***dangerous incident*** means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to —

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

**s. 38**

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

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

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

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (2) The notice must be given in accordance with this section and by the fastest possible means.
  - (3) The notice must be given —
    - (a) by telephone; or
    - (b) in writing.

Note for this subsection:

The written notice can be given by, for example, facsimile, email or other electronic means.

- (4) A person giving notice by telephone must —
- (a) give the details of the incident requested by the regulator; and
  - (b) if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made.
- (5) A written notice must be in a form, or contain the details, approved by the regulator.
- (6) If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the person conducting the business or undertaking —
- (a) details of the information received; or
  - (b) an acknowledgment of receiving the notice.
- (7) A person conducting a business or undertaking must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator under this section.
- Penalty for this subsection:
- (a) for an individual, a fine of \$5 500;
  - (b) for a body corporate, a fine of \$30 000.

**39. Duty to preserve incident sites**

- (1) The person with management or control of a workplace at which a notifiable incident has occurred must ensure, so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.
- Penalty for this subsection:
- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.

**s. 39**

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- (2) In subsection (1), a reference to a site includes any plant, substance, structure or thing associated with the notifiable incident.
- (3) Subsection (1) does not prevent any action —
  - (a) to assist an injured person; or
  - (b) to remove a deceased person; or
  - (c) that is essential to make the site safe or to minimise the risk of a further notifiable incident; or
  - (d) that is associated with a police investigation; or
  - (e) for which an inspector or the regulator has given permission.

## Part 4 — Authorisations

### Division 1 — Preliminary

#### 40. Meaning of authorised

In this Part —

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

### Division 2 — Requirements for authorisations

#### 41. Requirements for authorisation of workplaces

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

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

Penalty:

- (a) for an individual, a fine of \$55 000;
- (b) for a body corporate, a fine of \$285 000.

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

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

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

Penalty for this subsection:

- (a) for an individual, a fine of \$25 000;

(b) for a body corporate, a fine of \$115 000.

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

(a) the regulations require the plant or substance or its design to be authorised; and

(b) the plant or substance or its design is not authorised in accordance with the regulations.

Penalty for this subsection:

(a) for an individual, a fine of \$25 000;

(b) for a body corporate, a fine of \$115 000.

**43. Requirements for authorisation of work**

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

(a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and

(b) the person, or the person on whose behalf the work is carried out, is not authorised in accordance with the regulations.

Penalty for this subsection:

(a) for an individual, a fine of \$25 000;

(b) for a body corporate, a fine of \$115 000.

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

(a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and



- (b) the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with the regulations.

Penalty for this subsection:

- (a) for an individual, a fine of \$25 000;
- (b) for a body corporate, a fine of \$115 000.

### **Division 3 — Other requirements**

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

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

Penalty for this subsection:

- (a) for an individual, a fine of \$25 000;
- (b) for a body corporate, a fine of \$115 000.

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

Penalty for this subsection:

- (a) for an individual, a fine of \$25 000;

- (b) for a body corporate, a fine of \$115 000.

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

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

Penalty:

- (a) for an individual, a fine of \$25 000;
- (b) for a body corporate, a fine of \$115 000.

**Division 4 — Use of automated electronic systems for functions relating to authorisations**

**45A. Preliminary**

- (1) In this Division —

*authorisation function* means a power or function of the regulator under an authorisation provision;

*authorisation provision* means a regulation made under Schedule 2 clause 7.

Note for this definition:

Schedule 2 sets out matters in relation to which regulations may be made under this Act — see section 276(2).

- (2) Nothing in this Division limits the way in which, apart from this Division, the regulator may —
  - (a) make any decision; or
  - (b) otherwise exercise any power or perform any function; or
  - (c) do anything else that relates to —
    - (i) making any decision; or
    - (ii) otherwise exercising any power or performing any function.

**45B. Use of automated electronic systems under authorisation provisions**

- (1) The regulator may make arrangements for an automated electronic system to do 1 or more of the following —
  - (a) make any decision that the regulator must, or may, make under an authorisation provision;
  - (b) otherwise exercise or perform any authorisation function;
  - (c) do anything else (a *related thing*) that relates to —
    - (i) making any decision of the kind referred to in paragraph (a); or
    - (ii) otherwise exercising or performing any authorisation function.
- (2) The regulator may make arrangements under subsection (1) only if —
  - (a) the automated electronic system is under the regulator's control; and
  - (b) the regulator is satisfied that the system has the capacity, with reasonable reliability, to do the following —
    - (i) make any decision to which the arrangements apply;
    - (ii) otherwise exercise or perform any authorisation function to which the arrangements apply;
    - (iii) do any related thing to which the arrangements apply.
- (3) If an automated electronic system makes a decision, otherwise exercises or performs an authorisation function or does a related thing under subsection (1), the regulator is taken to have made the decision, otherwise exercised or performed the authorisation function or done the related thing.

- (4) Without limiting subsection (3), a person has the same rights (if any) to apply for a review under Part 12, or to apply for judicial review or any other remedy, as the person would have had if the decision had actually been made, the authorisation function had actually been exercised or performed or the related thing had actually been done by the regulator.
- (5) The regulator must ensure that details of any arrangements made under subsection (1), and any variation or revocation of the arrangements, are published as soon as practicable —
  - (a) in the *Gazette*; and
  - (b) on the regulator’s website.
- (6) The details must identify —
  - (a) the automated electronic system; and
  - (b) any decision, authorisation function or related thing to which the arrangements apply.
- (7) The use of an automated electronic system under subsection (1) is not invalid just because there is a failure to comply with subsections (5) and (6).

**45C. Replacing decision made by automated electronic system or re-exercising or re-performing authorisation function**

- (1) Subsection (2) applies if a decision (the *automated decision*) is made by an automated electronic system under section 45B(1)(a).
- (2) The regulator may replace the automated decision with a new decision if the new decision —
  - (a) could have been made under the authorisation provision in question; and
  - (b) is more favourable to the affected person.
- (3) Subsection (4) applies if an authorisation function is exercised or performed by an automated electronic system under section 45B(1)(b).

- (4) The regulator may re-exercise or re-perform the authorisation function in a way —
- (a) in which the authorisation function could have been exercised or performed under the authorisation provision in question; and
  - (b) that is more favourable to the affected person.
- (5) Nothing in this section requires the regulator to replace a decision or to re-exercise or re-perform an authorisation function.

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

### **Division 1 — Consultation, cooperation and coordination between duty holders**

#### **46. Duty to consult with other duty holders**

If more than 1 person has a duty in relation to the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, cooperate and coordinate activities with all other persons who have a duty in relation to the same matter.

Penalty:

- (a) for an individual, a fine of \$25 000;
- (b) for a body corporate, a fine of \$115 000.

#### **Division 2 — Consultation with workers**

#### **47. Duty to consult workers**

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

Penalty for this subsection:

- (a) for an individual, a fine of \$25 000;
  - (b) for a body corporate, a fine of \$115 000.
- (2) If the person conducting the business or undertaking and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures.
  - (3) The agreed procedures must not be inconsistent with section 48.

**48. Nature of consultation**

- (1) Consultation under this Division requires —
- (a) that relevant information about the matter is shared with workers; and
  - (b) that workers be given a reasonable opportunity —
    - (i) to express their views and to raise work health or safety issues in relation to the matter; and
    - (ii) to contribute to the decision-making process relating to the matter;
- and
- (c) that the views of workers are taken into account by the person conducting the business or undertaking; and
  - (d) that the workers consulted are advised of the outcome of the consultation in a timely manner.
- (2) If the workers are represented by a health and safety representative —
- (a) the consultation must involve the health and safety representative so far as is reasonably practicable; and
  - (b) without limiting paragraph (a), the person conducting the business or undertaking must make all reasonable efforts to carry out the consultation at times and places, or otherwise in ways, that are convenient for both the workers and the health and safety representative.

**49. When consultation is required**

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

- (a) when identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking;
- (b) when making decisions about ways to eliminate or minimise those risks;

- (c) when making decisions about the adequacy of facilities for the welfare of workers;
- (d) when proposing changes that may affect the health or safety of workers;
- (e) when making decisions about the procedures for —
  - (i) consulting with workers; or
  - (ii) resolving work health or safety issues at the workplace; or
  - (iii) monitoring the health of workers; or
  - (iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or
  - (v) providing information and training for workers;
- (f) when carrying out any other activity prescribed by the regulations for the purposes of this section.

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

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

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

A worker who carries out work for a business or undertaking may ask the person conducting the business or undertaking to facilitate the conduct of an election for 1 or more health and safety representatives to represent workers who carry out work for the business or undertaking.

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

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

- (1) If a request is made under section 50, the person conducting the business or undertaking must facilitate the determination of 1 or more work groups of workers.



- (2) The purpose of determining a work group is to facilitate the representation of workers in the work group by 1 or more health and safety representatives.
- (3) A work group may be determined for workers at 1 or more workplaces.

**52. Negotiations for determination of work group**

- (1) A work group is to be determined by negotiation and agreement between —
  - (a) the person conducting the business or undertaking; and
  - (b) the workers who will form the work group or their representatives.
- (2) The person conducting the business or undertaking must take all reasonable steps to commence negotiations with the workers within 14 days after the day on which a request is made under section 50.
- (3) The purpose of the negotiations is to determine —
  - (a) the number and composition of work groups to be represented by health and safety representatives; and
  - (b) the number of health and safety representatives and deputy health and safety representatives (if any) to be elected; and
  - (c) the workplace or workplaces to which the work groups will apply.
- (4) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.
- (5) The person conducting the business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a

variation of an agreement) and must not exclude the representative from those negotiations.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (6) The regulations may prescribe the matters that must be taken into account in negotiations for and determination of work groups and variations of agreements concerning work groups.

**53. Notice to workers**

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

Penalty for this subsection:

- (a) for an individual, a fine of \$2 500;
  - (b) for a body corporate, a fine of \$12 500.
- (2) The person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of the variation (if any) to the agreement.

Penalty for this subsection:

- (a) for an individual, a fine of \$2 500;
- (b) for a body corporate, a fine of \$12 500.

**54. Failure of negotiations**

- (1) If there is a failure of negotiations (including negotiations concerning the variation of an agreement), any person who is or

would be a party to the negotiations may ask the regulator to appoint an inspector for the purposes of this section.

- (2) An inspector appointed under subsection (1) may decide —
  - (a) the matters referred to in section 52(3) or any of those matters which is the subject of the proposed variation (as the case requires); or
  - (b) that work groups should not be determined or that the agreement should not be varied (as the case requires).
- (3) For the purposes of this section, there is a failure of negotiations if —
  - (a) the person conducting the business or undertaking has not taken all reasonable steps to commence negotiations with the workers and negotiations have not commenced within 14 days after the day on which —
    - (i) a request is made under section 50; or
    - (ii) a party to the agreement requests the variation of the agreement;
  - or
  - (b) agreement cannot be reached on a matter relating to the determination of a work group (or the variation of an agreement concerning a work group) within a reasonable time after negotiations commence.
- (4) A decision under this section is taken to be an agreement under section 52.

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

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

- (1) Work groups may be determined for workers carrying out work for 2 or more persons conducting businesses or undertakings at 1 or more workplaces.

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

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

- (1) Negotiations concerning work groups under this Subdivision must be directed only at the following —
  - (a) the number and composition of work groups to be represented by health and safety representatives;
  - (b) the number of health and safety representatives and deputy health and safety representatives (if any) for each work group;
  - (c) the workplace or workplaces to which the work groups will apply;
  - (d) the businesses or undertakings to which the work groups will apply.
- (2) A person conducting a business or undertaking must, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a

variation of an agreement) and must not exclude the representative from those negotiations.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (3) If agreement cannot be reached on a matter relating to the determination of a work group (or a variation of an agreement) within a reasonable time after negotiations commence under this Subdivision, any party to the negotiations may ask the regulator to appoint an inspector to assist the negotiations in relation to that matter.
- (4) The regulations may prescribe the matters that must be taken into account in negotiations for and determination of work groups and variations of agreements.

**57. Notice to workers**

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

Penalty for this subsection:

- (a) for an individual, a fine of \$2 500;
  - (b) for a body corporate, a fine of \$12 500.
- (2) A person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups must, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of the variation (if any) to the agreement.

Penalty for this subsection:

- (a) for an individual, a fine of \$2 500;

- (b) for a body corporate, a fine of \$12 500.

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

- (1) A party to a negotiation for an agreement, or to an agreement, concerning a work group under this Subdivision may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.
- (2) If a party withdraws from an agreement concerning a work group under this Subdivision —
  - (a) the other parties must negotiate a variation to the agreement in accordance with section 56; and
  - (b) the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

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

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

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

**60. Eligibility to be elected**

A worker is —

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

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

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

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

**62. Eligibility to vote**

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

**63. When election not required**

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

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

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

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

- (1) An application may be made to the Tribunal to disqualify a health and safety representative on the ground that the representative has —
  - (a) exercised a power or performed a function as a health and safety representative for an improper purpose; or
  - (b) used or disclosed any information that they acquired as a health and safety representative for a purpose other than in connection with the role of health and safety representative.



- (2) The following persons may make an application under this section —
- (a) any person adversely affected by —
    - (i) the exercise of a power or the performance of a function referred to in subsection (1)(a); or
    - (ii) the use or disclosure of information referred to in subsection (1)(b);
  - (b) the regulator.
- (3) If the 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 indefinitely.

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

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

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

**67. Deputy health and safety representatives**

- (1) Each deputy health and safety representative for a work group is to be elected in the same way as a health and safety representative for the work group.
- (2) If the health and safety representative for a work group ceases to hold office or is unable (because of absence or any other reason) to exercise the powers or perform the functions of a health and safety representative under this Act —
- (a) the powers and functions may be exercised or performed by a deputy health and safety representative for the work group; and

- (b) this Act applies in relation to the deputy health and safety representative as if the deputy were the health and safety representative.
- (3) Sections 64, 65, 66, 72 and 73 apply to deputy health and safety representatives in the same way as they apply to health and safety representatives.

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

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

- (1) The powers and functions of a health and safety representative for a work group are —
  - (a) to represent the workers in the work group in matters relating to work health and safety; and
  - (b) to monitor the measures taken by the person conducting the relevant business or undertaking or that person's representative in compliance with this Act in relation to workers in the work group; and
  - (c) to investigate complaints from members of the work group relating to work health and safety; and
  - (d) to inquire into anything that appears to be a risk to the health or safety of workers in the work group arising from the conduct of the business or undertaking.
- (2) In exercising a power or performing a function, the health and safety representative may —
  - (a) inspect the workplace or any part of the workplace at which a worker in the work group works —
    - (i) at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace; and

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

and

- (b) accompany an inspector during an inspection of the workplace or part of the workplace at which a worker in the work group works; and
- (c) with the consent of a worker that the health and safety representative represents, be present at an interview concerning work health and safety between the worker and —
  - (i) an inspector; or
  - (ii) the person conducting the business or undertaking at that workplace or the person's representative;

and

- (d) with the consent of 1 or more workers that the health and safety representative represents, be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and —
  - (i) an inspector; or
  - (ii) the person conducting the business or undertaking at that workplace or the person's representative;

and

- (e) request the establishment of a health and safety committee; and
- (f) receive information concerning the work health and safety of workers in the work group; and

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

Note for this subsection:

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

- (3) Despite subsection (2)(f), a health and safety representative is not entitled to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that —
  - (a) does not identify the worker; and
  - (b) could not reasonably be expected to lead to the identification of the worker.
- (3A) If a person assisting a health and safety representative under subsection (2)(g) requires access to the workplace to provide the assistance, the health and safety representative must give notice of the assistant's proposed entry to —
  - (a) the person conducting the business or undertaking for whom the representative's work group carries out the work at the workplace; and
  - (b) the person with management or control of the workplace.
- (3B) A notice under subsection (3A) must —
  - (a) comply with the regulations; and
  - (b) be given during the usual working hours at the workplace at least 24 hours, but not more than 14 days, before the assistant's entry.
- (4) Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.

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

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

and the health and safety representative (and any deputy health and safety representative) for that other work group is found, after reasonable inquiry, to be unavailable.

- (3) In this section —
- another work group* means another work group of workers carrying out work for —
- (a) a business or undertaking to which the relevant work group relates; or
  - (b) any other business or undertaking if any of the workers in the work group carry out work at a workplace at which any of the workers in the relevant work group also carry out work.

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

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

- (1) The person conducting a business or undertaking must —
- (a) consult, so far as is reasonably practicable, on work health and safety matters with any health and safety representative for a work group of workers carrying out work for the business or undertaking; and
  - (b) confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group; and
  - (c) allow any health and safety representative for the work group to have access to information that the person has relating to —
    - (i) hazards (including associated risks) at the workplace affecting workers in the work group; and
    - (ii) the health and safety of the workers in the work group;and
  - (d) with the consent of a worker that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between the worker and —
    - (i) an inspector; or
    - (ii) the person conducting the business or undertaking at that workplace or the person's representative;and

- (e) with the consent of 1 or more workers that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and —
  - (i) an inspector; or
  - (ii) the person conducting the business or undertaking at that workplace or the person's representative;and
- (f) provide any resources, facilities and assistance to a health and safety representative for the work group that are reasonably necessary or prescribed by the regulations to enable the representative to exercise the representative's powers and perform the representative's functions under this Act; and
- (g) allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided; and
- (h) permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works; and
- (i) provide any other assistance to the health and safety representative for the work group that may be required by the regulations.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

- (2) The person conducting a business or undertaking must allow a health and safety representative to spend such time as is reasonably necessary to exercise the representative's powers and perform the representative's functions under this Act.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.
- (3) Any time that a health and safety representative spends for the purposes of exercising the representative's powers or performing the representative's functions under this Act must be with the pay that the representative would otherwise be entitled to receive for performing the representative's normal duties during that period.

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

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

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.
- (3) The person conducting a business or undertaking is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in section 70(1)(g).



- (4) The person conducting a business or undertaking is not required to allow a person assisting a health and safety representative for a work group to have access to the workplace —
  - (a) if the assistant has had the assistant’s IR entry authority revoked; or
  - (b) during any period that the assistant’s IR entry authority is suspended.
- (5) The person conducting a business or undertaking may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group.
- (5A) The reasonable grounds under subsection (5) include the failure of the health and safety representative to give notice under section 68(3A).
- (6) If access is refused to a person assisting a health and safety representative under subsection (5), the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter.

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

- (1) The person conducting a business or undertaking must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a course of training in work health and safety that is —
  - (a) approved by the Work Health and Safety Commission; and
  - (b) a course that the health and safety representative is required under the regulations to attend; and
  - (c) chosen by the health and safety representative.

- (2) The person conducting the business or undertaking must —
- (a) as soon as practicable within the period of 3 months after the day on which the request is made, allow the health and safety representative time off work to attend the course of training; and
  - (b) pay the course fees and any other reasonable costs associated with the health and safety representative's attendance at the course of training.

- (3) If —
- (a) a health and safety representative represents a work group of the workers of more than 1 business or undertaking; and
  - (b) the person conducting any of those businesses or undertakings has complied with this section in relation to the representative,

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

- (4) Any time that a health and safety representative is given off work to attend the course of training must be with the pay that the representative would otherwise be entitled to receive for performing the representative's normal duties during that period.
- (5) If agreement cannot be reached between the person conducting the business or undertaking and the health and safety representative within the time required by subsection (2) as to the matters set out in that subsection, either party may ask the regulator to appoint an inspector to decide the matter.
- (6) The inspector may decide the matter in accordance with this section.

- (7) The person conducting the business or undertaking must then —
- (a) allow the health and safety representative to attend the course of training at the time decided by the inspector; and
  - (b) pay the costs decided by the inspector.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

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

- (1) If a health and safety representative, or deputy health and safety representative (if any), represents a work group of workers carrying out work for 2 or more persons conducting businesses or undertakings —
- (a) the costs of the representative exercising powers and performing functions under this Act; and
  - (b) the costs referred to in section 72(2)(b),

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

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

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

A person conducting a business or undertaking must ensure that —

- (a) a list of each health and safety representative and deputy health and safety representative (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date; and

- (b) a copy of the up-to-date list is displayed —
  - (i) at the principal place of business of the business or undertaking; and
  - (ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups,in a manner that is readily accessible to workers in the relevant work group or work groups.

Penalty:

- (a) for an individual, a fine of \$2 500;
- (b) for a body corporate, a fine of \$12 500.

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

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

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

Penalty for this subsection:

- (a) for an individual, a fine of \$5 500;
- (b) for a body corporate, a fine of \$30 000.

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

Note for this section:

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

#### **76. Constitution of committee**

- (1) Subject to subsections (2) to (6), 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 they consent, is a member of the committee.
- (3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 or more of their number (who consent) to be members of the committee.
- (4) At least half of the members of the committee must be workers who are not nominated by the person conducting the business or undertaking.
- (5) At least 1 member of the committee must be a representative of the person conducting the business or undertaking who has sufficient authority within the business or undertaking to ensure that the duties under section 79 are complied with in relation to the committee.
- (6) If the person conducting the business or undertaking is an individual, the requirement of subsection (5) can be met by that person being a member of the committee.
- (7) If agreement is not reached under this section within a reasonable time, any party may ask the regulator to appoint an inspector to decide the matter.

- (8) An inspector appointed on a request under subsection (7) may decide the constitution of the health and safety committee or that the committee should not be established.
- (9) A decision of an inspector under this section is taken to be an agreement under this section between the parties.

**77. Functions of committee**

The functions of a health and safety committee are —

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

**78. Meetings of committee**

A health and safety committee must meet —

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

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

- (1) The person conducting a business or undertaking must allow each member of the health and safety committee to spend the time that is reasonably necessary to attend meetings of the committee or to perform functions as a member of the committee.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;

- (b) for a body corporate, a fine of \$55 000.
- (2) Any time that a member of a health and safety committee spends for the purposes set out in subsection (1) must be with the pay that the member would otherwise be entitled to receive for performing the member's normal duties during that period.
- (3) The person conducting a business or undertaking must allow the health and safety committee for a workplace to have access to information that the person has relating to —
- (a) hazards (including associated risks) at the workplace; and
  - (b) the health and safety of the workers at the workplace.
- Penalty for this subsection:
- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (4) Despite subsection (3), the person conducting a business or undertaking must not allow the health and safety committee to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that —
- (a) does not identify the worker; and
  - (b) could not reasonably be expected to lead to the identification of the worker.
- Penalty for this subsection:
- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (5) The person conducting a business or undertaking must, without unreasonable delay —
- (a) consider any recommendation or other decision made by the health and safety committee within the scope of the committee's functions that requires the person's agreement if it is to be implemented; and

- (b) provide a response to the committee stating the extent to which the person agrees to the implementation of the recommendation or other decision; and
- (c) if the person agrees to the implementation of the recommendation or other decision (wholly or partly), take any action required to be taken by the person for the purposes of the implementation.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (6) The person conducting a business or undertaking must not unreasonably withhold the person's agreement to the implementation of a recommendation or other decision referred to in subsection (5)(a) (wholly or partly).

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

### **Division 5 — Issue resolution**

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

- (1) For the purposes of this Division, the following persons are *parties* to an issue —
- (a) any person conducting a business or undertaking that is involved in the issue;
  - (b) any representative of a person or persons referred to in paragraph (a) who is representing the person or persons in relation to the issue;
  - (c) any worker affected by the issue;
  - (d) any representative of a worker or workers referred to in paragraph (c) who is representing the worker or workers in relation to the issue.



- (2) A person conducting a business or undertaking must ensure that the person's representative referred to in subsection (1)(b) (if any) —
- (a) is not a health and safety representative; and
  - (b) has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.

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

- (1) This section applies if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue.
- (2) The parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed in the regulations.
- (3) A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

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

- (1) Despite section 81, a party to an issue may ask the regulator to appoint an inspector to make a decision resolving the issue.
- (2) The request does not prevent —
- (a) a worker from exercising the right under Division 6 of this Part to cease work; or
  - (b) a health and safety representative from issuing a provisional improvement notice or a direction under Division 6 of this Part to cease work.
- (3) No later than 2 days after the day on which the request is made, an inspector must make a decision resolving the issue.

- (4) The inspector's decision is taken to be a resolution of the issue agreed by the parties under section 81(2).
- (5) Despite subsection (3), the regulator may refuse the request if the regulator is not satisfied that the party making the request, or any other party whom the party making the request represents, has made reasonable efforts to achieve a resolution of the issue under section 81(2).
- (6) Subsection (3) is also subject to section 82A.

**82A. Extension of deadline for making decision resolving issue**

- (1) If the deadline set by section 82(3) is not practicable in relation to a request under section 82(1), the regulator must apply to the Tribunal to set a new deadline, and the Tribunal may set a new deadline that it considers to be practicable.
- (2) The regulator's application must be made as soon as the regulator realises that the deadline is not practicable or that no decision has been made within the deadline.
- (3) Before setting a new deadline, the Tribunal must give any party to the issue who wants to make submissions on the matter an opportunity to do so.

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

**83. Definition of cease work under this Division**

In this Division —

*cease work under this Division* means —

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

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

- (1) A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose —
  - (a) the worker to a serious risk to their health or safety emanating from an immediate or imminent exposure to a hazard; or
  - (b) any other person to a serious risk to their health or safety emanating from an immediate or imminent exposure to a hazard.
- (2) A police officer must not cease, or refuse to carry out, work under this section if the ceasing, or refusal to carry out, work would affect adversely, or could reasonably be expected to affect adversely, a covert operation or a dangerous operation.

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

- (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety emanating from an immediate or imminent exposure to a hazard.

Note for this subsection:

If the health and safety representative's concern relates to 2 or more workers in the work group, a single direction to cease work may be given to all or some of those workers as a group.

- (2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after —
  - (a) consulting about the matter with the person conducting the business or undertaking for whom the worker is carrying out work; and

- (b) attempting to resolve the matter as an issue under Division 5 of this Part.
- (3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under Division 5 of this Part if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.
- (4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).
- (5) The health and safety representative must inform the person conducting the business or undertaking of any direction given by the health and safety representative to a worker under this section.
- (6) A health and safety representative cannot give a direction under this section unless the representative has —
  - (a) completed initial training prescribed by the regulations referred to in section 72(1)(b); or
  - (b) previously completed that training when acting as a health and safety representative for another work group; or
  - (c) completed training equivalent to that training under a corresponding WHS law.
- (7) A health and safety representative cannot give a direction under this section if compliance with the direction would affect adversely, or could reasonably be expected to affect adversely, a covert operation or a dangerous operation.

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

A worker who ceases work under this Division must —

- (a) as soon as practicable, notify the person conducting the business or undertaking that the worker has ceased work

under this Division unless the worker ceased work under a direction from a health and safety representative; and

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

**87. Alternative work**

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

**88. Continuity of engagement of worker**

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

- (a) at the same or another workplace; and
- (b) that was safe and appropriate for the worker to carry out.

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

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

Note for this section:

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

**89A. Referral of issue about application of section 88 to Tribunal**

If there is an issue about whether section 88 applies to a worker, or about how that section is to be applied to a worker, the worker, or the worker's union, may apply to the Tribunal to resolve the issue (whether or not an inspector has been appointed under section 89 in relation to the issue).

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

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

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

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

A provisional improvement notice must be in writing.

**92. Contents of provisional improvement notice**

A provisional improvement notice must state —

(a) that the health and safety representative believes the person —

(i) is contravening a provision of this Act; or

(ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;

and

(b) the provision the representative believes is being, or has been, contravened; and

(c) briefly, how the provision is being, or has been, contravened; and

(d) the day, no earlier than the 8<sup>th</sup> day after the day on which the notice is issued, by which the person is required to remedy the contravention or likely contravention.

**93. Provisional improvement notice may include recommendations to remedy contravention**

(1) A provisional improvement notice may include recommendations concerning the measures that may be taken to remedy the contravention, prevent the likely contravention, or the matters causing the contravention or likely contravention, to which the notice relates.

(2) It is not an offence to fail to comply with the recommendations in a notice.

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

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

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

**95. Issue of provisional improvement notice**

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

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

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

**97. Display of provisional improvement notice**

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

Penalty for this subsection:

- (a) for an individual, a fine of \$5 500;
- (b) for a body corporate, a fine of \$30 000.

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

Penalty for this subsection:

- (a) for an individual, a fine of \$5 500;



(b) for a body corporate, a fine of \$30 000.

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

A provisional improvement notice is not invalid only because of —

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

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

- (1) This section applies if a provisional improvement notice has been issued to a person, subject to section 100(4).
- (2) The person must comply with the provisional improvement notice within the time specified in the notice.

Penalty for this subsection:

- (a) for an individual, a fine of \$55 000;
- (b) for a body corporate, a fine of \$285 000.

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

- (1) Within 7 days after the day on which a provisional improvement notice is issued to a person —
  - (a) the person to whom it was issued; or
  - (b) if the person is a worker, the person conducting the business or undertaking at the workplace at which the worker carries out work,

may ask the regulator to appoint an inspector to review the notice.

- (2) A person who makes a request under subsection (1) must, as soon as practicable, inform the health and safety representative of the request.
- (3) Subsection (4) applies if a person has —
  - (a) made a request under subsection (1); and
  - (b) informed the health and safety representative of the request or taken all reasonable steps to do so.
- (4) The operation of the provisional improvement notice is stayed until the inspector makes a decision on the review.

**101. Inspector to review notice**

- (1) If a request is made under section 100, an inspector must, as soon as practicable, review the provisional improvement notice and inquire into the circumstances that are the subject of the provisional improvement notice.
- (2) An inspector may review a provisional improvement notice even if the period for compliance with the notice has expired.

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

- (1) After reviewing the provisional improvement notice, the inspector must —
  - (a) confirm the provisional improvement notice; or
  - (b) confirm the provisional improvement notice with changes; or
  - (c) cancel the provisional improvement notice.
- (2) The inspector must give a copy of the inspector's decision to —
  - (a) the applicant for the review of the provisional improvement notice; and
  - (b) the health and safety representative who issued the notice.

- (3) A provisional improvement notice that is confirmed (with or without changes) by an inspector is taken to be an improvement notice issued by the inspector under this Act.

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

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

- (1) In this section —  
*lock-up, prison* and *prisoner* have the meanings given in the *Prisons Act 1981* section 3(1).
- (2) Nothing in this Part applies to a worker who is in custody in a prison or lock-up, as a prisoner or otherwise.

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

### **Division 1 — Prohibition on discriminatory, coercive or misleading conduct**

#### **104. Prohibition on discriminatory conduct**

- (1) A person must not engage in discriminatory conduct for a prohibited reason.

Penalty for this subsection:

- (a) for an individual, a fine of \$115 000;
  - (b) for a body corporate, a fine of \$570 000.
- (2) A person commits an offence under subsection (1) only if the reason referred to in section 106 was the dominant reason for the discriminatory conduct.

Note for this section:

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

#### **105. What is discriminatory conduct**

- (1) For the purposes of this Part, a person engages in *discriminatory conduct* if —
- (a) the person —
    - (i) dismisses a worker; or
    - (ii) terminates a contract for services with a worker; or
    - (iii) puts a worker to the worker's detriment in the engagement of the worker; or
    - (iv) alters the position of a worker to the worker's detriment;
- or

- (b) the person —
    - (i) refuses or fails to offer to engage a prospective worker; or
    - (ii) treats a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement;or
  - (c) the person terminates a commercial arrangement with another person; or
  - (d) the person refuses or fails to enter into a commercial arrangement with another person.
- (2) For the purposes of this Part, a person also engages in ***discriminatory conduct*** if the person organises to take any action referred to in subsection (1) or threatens to organise or take that action.

**106. What is a prohibited reason**

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

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

**Work Health and Safety Act 2020**

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

**Division 1** Prohibition on discriminatory, coercive or misleading conduct

**s. 106**

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

- (i) is involved in, has been involved in or proposes to be involved in resolving a work health and safety issue under this Act; or
- (j) is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under this Act.

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

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

Penalty:

- (a) for an individual, a fine of \$115 000;
- (b) for a body corporate, a fine of \$570 000.

Note for this section:

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

**108. Prohibition of coercion or inducement**

- (1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce the other person, or a third person —
  - (a) to exercise or not to exercise a power, or to propose to exercise or not to exercise a power, under this Act; or
  - (b) to perform or not to perform a function, or to propose to perform or not to perform a function, under this Act; or
  - (c) to exercise or not to exercise a power or perform a function, or to propose to exercise or not to exercise a power or perform a function, in a particular way; or

- (d) to refrain from seeking, or continuing to undertake, a role under this Act.

Penalty for this subsection:

- (a) for an individual, a fine of \$115 000;
- (b) for a body corporate, a fine of \$570 000.

Note for this subsection:

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

- (2) In this section, a reference to taking action or threatening to take action against a person includes a reference to not taking a particular action or threatening not to take a particular action in relation to that person.
- (3) To avoid doubt, a reasonable direction given by an emergency services worker in an emergency is not an action with intent to coerce or induce a person.

**109. Misrepresentation**

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

Penalty for this subsection:

- (a) for an individual, a fine of \$115 000;
  - (b) for a body corporate, a fine of \$570 000.
- (2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.



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

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

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

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

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

- (a) an order that the offender pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the court considers appropriate;

- (b) in relation to a person who was or is an employee or prospective employee, an order that —
  - (i) the person be reinstated or re-employed in their former position or, if that position is not available, in a similar position; or
  - (ii) the person be employed in the position for which they had applied or a similar position.

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

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

- (1) An eligible person may apply to the Tribunal for an order under this section.
- (2) The Tribunal may make 1 or more of the orders set out in subsection (3) in relation to a person who has —
  - (a) engaged in discriminatory conduct for a prohibited reason; or
  - (b) requested, instructed, induced, encouraged, authorised or assisted another person to engage in discriminatory conduct for a prohibited reason; or
  - (c) contravened section 108.
- (3) For the purposes of subsection (2), the orders that the Tribunal may make are —
  - (a) in the case of conduct referred to in subsection (2)(a) or (b), an order that the person pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the Tribunal considers appropriate; or

- (b) in the case of conduct referred to in subsection (2)(a) in relation to a worker who was or is an employee or prospective employee, an order that —
- (i) the worker be reinstated or re-employed in their former position or, if that position is not available, in a similar position; or
  - (ii) the prospective worker be employed in the position for which they had applied or a similar position;
- or
- (c) any other order that the Tribunal considers appropriate.
- (4) For the purposes of this section, a person may be found to have engaged in discriminatory conduct for a prohibited reason only if a reason referred to in section 106 was a substantial reason for the conduct.
- (5) Nothing in this section is to be construed as limiting any other power of the Tribunal.
- (6) For the purposes of this section, each of the following is an *eligible person* —
- (a) a person affected by the contravention;
  - (b) a person authorised as a representative by a person referred to in paragraph (a).

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

- (1) A proceeding brought under section 112 must be commenced not more than 1 year after the date on which the applicant knew or ought to have known that the cause of action accrued.
- (2) In a proceeding under section 112 in relation to conduct referred to in section 112(2)(a) or (b), if a prohibited reason is alleged for discriminatory conduct, that reason is presumed to be a substantial reason for that conduct unless the defendant proves,

on the balance of probabilities, that the reason was not a substantial reason for the conduct.

- (3) It is a defence to a proceeding under section 112 in relation to conduct referred to in section 112(2)(a) or (b) if the defendant proves that —
  - (a) the conduct was reasonable in the circumstances; and
  - (b) a substantial reason for the conduct was to comply with the requirements of this Act or a corresponding WHS law.
- (4) To avoid doubt, the burden of proof on the defendant under subsections (2) and (3) is a legal burden of proof.

### **Division 4 — General**

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

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

**115. Prohibition on multiple actions**

A person cannot —

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

**Part 7 — Not used**

**Division 1 — Not used**

**116. Not used**

**Division 2 — Not used**

**117. Not used**

**118. Not used**

**119. Not used**

**120. Not used**

**Division 3 — Not used**

**121. Not used**

**122. Not used**

**Division 4 — Not used**

**123. Not used**

**124. Not used**

**125. Not used**

**126. Not used**

**127. Not used**

**128. Not used**

**129. Not used**

**130. Not used**

**Division 5 — Not used**

- 131. Not used
- 132. Not used
- 133. Not used
- 134. Not used
- 135. Not used
- 136. Not used
- 137. Not used
- 138. Not used
- 139. Not used
- 140. Not used

**Division 6 — Not used**

- 141. Not used
- 142. Not used
- 143. Not used

**Division 7 — Not used**

- 144. Not used
- 145. Not used
- 146. Not used
- 147. Not used

**Work Health and Safety Act 2020**

**Part 7** Not used

**Division 8** Not used

**s. 148**

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**148. Not used**

**Division 8 — Not used**

**149. Not used**

**150. Not used**

**151. Not used**



## **Part 8 — The regulator**

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

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

The regulator has the following functions —

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

**153. Powers of regulator**

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

**154. Delegation by regulator**

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

**Division 2 — Powers of regulator to obtain information and require independent reports**

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

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

- manner specified in the notice, that information of which the person has knowledge;
- (b) to provide to the regulator, in accordance with the notice, those documents;
  - (c) to appear before a person appointed by the regulator at a reasonable time and place determined by that person and do whichever of the following is specified in the notice —
    - (i) give that evidence orally;
    - (ii) give that evidence in writing;
    - (iii) provide those documents.
- (3) The notice must —
- (a) state that the requirement is made under this section; and
  - (b) contain a statement to the effect that a failure to comply with a requirement is an offence; and
  - (c) if the notice requires the person to provide information or documents or answer questions — contain a statement about the effect of sections 172 and 269 and, if relevant, section 155A(5) and (6).
- (4) The powers under subsection (2)(b) and (c)(iii) include (without limitation) the power to require that a copy or reproduction of a document be provided in the form set out in the notice (in addition to, or instead of, the document itself).
- (5) Without limiting subsections (1) and (2), a notice may be given to a person, and a requirement stated in a notice applies to the person to whom the notice is given, even if any of the following is the case —
- (a) the person is outside the State;
  - (b) any relevant document is outside the State;
  - (c) any relevant information, document or evidence relates to a matter occurring outside the State.

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

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.
- (8) Section 172 (with any necessary changes) applies to a requirement under this section.

**155A. Supplementary provisions relating to appearances**

- (1) The regulator must not make a requirement under section 155(2)(c) unless the regulator has taken all reasonable steps to obtain the information under section 155(2)(a) and (b) and has been unable to do so.
- (2) Before determining the time and place for an appearance under section 155(2)(c), the person before whom the appearance is to be made must make reasonable efforts to agree that time and place with the person who is required to appear.
- (3) An appearance under section 155(2)(c) may be recorded in any way the person before whom the appearance is made considers appropriate.

Note for this subsection:

An appearance may be recorded, for example, using audio, audiovisual or other electronic means.

- (4) If an appearance is to be recorded under subsection (3), the person before whom the appearance is to be made must, beforehand, inform the person who is required to appear —
- (a) that the recording will be done; and
  - (b) of the way in which the recording will be done.

- (5) A person (the *witness*) who is required to appear under section 155(2)(c) may appear with a legal practitioner nominated by the witness, and approved by the regulator, for the purposes of the appearance.
- (6) The regulator must approve any legal practitioner nominated by the witness unless the regulator —
- (a) has reasonable grounds to believe that —
    - (i) the legal practitioner, or any other legal practitioner in the legal practitioner's firm, represents 1 or more other persons who have an interest in the matter to which the witness's appearance relates; and
    - (ii) for that reason, approving the legal practitioner would undermine the purpose of the witness's appearance;
  - or
  - (b) has other reasonable grounds for withholding approval.

**155B. Power of regulator to require independent report**

- (1) The regulator may, by written notice given to a person conducting a business or undertaking, require that person to procure, and provide to the regulator, a report in accordance with subsection (2) —
- (a) that relates to work health and safety at any workplace of the business or undertaking, generally or in relation to a particular matter; or
  - (b) without limiting paragraph (a), that relates to a particular accident or other occurrence at any workplace of the business or undertaking.
- (2) The report must —
- (a) be prepared by a suitably qualified person who is independent of the person conducting the business or undertaking and who is approved by the regulator; and

**Work Health and Safety Act 2020**

**Part 8** The regulator

**Division 2** Powers of regulator to obtain information and require independent reports

**s. 155C**

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- (b) include any contents required by the regulator's notice; and
  - (c) be provided to the regulator as soon as is reasonably practicable and, in any event, within any period specified in the regulator's notice; and
  - (d) otherwise comply with any prescribed requirements.
- (3) The regulator's notice must state the regulator's reasons for requiring the report.
- (4) A person to whom a notice is given under this section must not, without reasonable excuse, refuse or fail to comply with the requirement imposed by the notice.
- Penalty for this subsection:
- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

**155C. Powers to copy and retain documents**

- (1) The regulator may —
- (a) make copies or reproductions of, or take extracts from, a document provided to, or otherwise obtained, accessed or recovered by, the regulator under this Act; and
  - (b) keep that document for the period that the regulator considers necessary.
- (2) While the regulator retains custody of the original of a document, the regulator must permit the following persons to inspect, or make copies of, the original document at all reasonable times —
- (a) the person who provided the original document or from whom it was obtained;
  - (b) the owner of the original document;

- (c) a person authorised in writing by a person referred to in paragraph (a) or (b) on the production of the written authorisation to the regulator.

## **Part 9 — Securing compliance**

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

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

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

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

#### **157. Identification of inspectors**

- (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) When exercising compliance powers, an inspector must, on request, identify themselves —
  - (a) by producing their identity card for inspection; or
  - (b) in another way prescribed by the regulations.
- (3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the regulator as soon as practicable.

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

- (1) An inspector must give written notice to the regulator of all interests, pecuniary or otherwise, that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector's functions.



- (2) The regulator must give a direction to an inspector not to deal, or to no longer deal, with a matter if the regulator becomes aware that the inspector has a potential conflict of interest in relation to a matter and the regulator considers that the inspector should not deal, or should no longer deal, with the matter.

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

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

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

**160. Functions and powers of inspectors**

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

- (a) to provide information and advice about compliance with this Act;
- (b) to assist in the resolution of —
  - (i) work health and safety issues at workplaces; and
  - (ii) issues related to access to a workplace by an assistant to a health and safety representative;
- (c) to review disputed provisional improvement notices;
- (d) to require compliance with this Act through the issuing of notices;
- (e) to investigate contraventions of this Act and assist in the prosecution of offences;
- (f) to carry out investigations for the purposes of the regulator's function under section 152(c).

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

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

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

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

**Division 3 — Powers relating to entry**

**Subdivision 1 — General powers of entry**

**163.     Powers of entry**

- (1) An inspector may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace.
- (2) An entry may be made under subsection (1) with, or without, the consent of the person with management or control of the workplace.
- (3) If an inspector enters a place under subsection (1) and it is not a workplace, the inspector must leave the place immediately.

Note for this section:

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

**164.     Notification of entry**

- (1) An inspector may enter a place under section 163 without prior notice to any person.

- (2) An inspector must, as soon as practicable after entry to a workplace or suspected workplace under section 163, take all reasonable steps to notify the following persons of the entry and the purpose of the entry —
- (a) the relevant person conducting a business or undertaking at the workplace;
  - (b) the person with management or control of the workplace;
  - (c) any health and safety representative for workers carrying out work for that business or undertaking at the workplace.
- (3) However, an inspector is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.
- (4) In this section —
- relevant person conducting a business or undertaking* means the person conducting any business or undertaking in relation to which the inspector is exercising the powers of entry.

**165. General powers on entry under section 163**

- (1) An inspector who enters a workplace under section 163 may do all or any of the following —
- (a) inspect, examine and make inquiries at the workplace;
  - (b) inspect and examine anything (including a document) at the workplace;
  - (c) bring to the workplace and use any equipment or materials that may be required;
  - (d) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);

- (e) take and remove for analysis, testing or examination a sample of any substance or thing without paying for it;
  - (f) require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e);
  - (g) exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of this Act.
- (2) A person required to give reasonable help under subsection (1)(f) must not refuse or fail to comply with the requirement.
- Penalty for this subsection:
- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.

**166. Persons assisting inspectors**

- (1) A person (the *assistant*), including an interpreter, may accompany the inspector entering a workplace under section 163 to assist the inspector if the inspector considers the assistance is necessary.
- (2) The assistant —
  - (a) may do the things at the place and in the manner that the inspector reasonably requires to assist the inspector to exercise compliance powers; but
  - (b) must not do anything that the inspector does not have power to do.
- (3) Anything done lawfully by the assistant is taken to have been done by the inspector.



- (ii) may contain or provide, or enable access to or the recovery of, evidence of an offence against this Act;
  - or
  - (b) that the issue of the warrant is reasonably necessary to enable an inspector to exercise compliance powers.
- (5) The entry warrant must contain the following information —
- (a) a description of the place to be entered;
  - (b) the purpose for which the warrant is issued;
  - (c) a description of any thing, or class of things, to which section 167C(1)(f) applies;
  - (d) a description of any document, or class of documents, to which section 167C(1)(i) applies;
  - (e) the hours of the day or night when the place may be entered;
  - (f) the period, not exceeding 30 days, during which the warrant may be executed;
  - (g) the name of the JP who issued the warrant;
  - (h) the date and time when the warrant was issued.
- (6) The entry warrant must be in the prescribed form.

**167A. Use of remote communication**

- (1) An inspector may apply to a JP for an entry warrant using remote communication if the inspector reasonably considers it necessary to do so because of —
- (a) urgent circumstances; or
  - (b) other special circumstances.

Note for this subsection:

For the purposes of paragraph (b), an example of special circumstances is the inspector's remote location.

- (2) The application —
  - (a) cannot be made before the inspector prepares the written application complying with section 167(3); but
  - (b) may be made before the oath is administered for the application.
- (3) The JP may issue the entry warrant (the *original warrant*) only if the JP is satisfied that —
  - (a) it was necessary for the application to be made under this section; and
  - (b) the way the application was made was appropriate.
- (4) After the JP issues the original warrant —
  - (a) the JP must immediately give a copy of the original warrant to the inspector using remote communication if that is reasonably practicable to do; or
  - (b) otherwise —
    - (i) the JP must tell the inspector the information referred to in section 167(5); and
    - (ii) the inspector must complete a form of warrant, including by writing on it the information referred to in section 167(5).
- (5) The copy of the original warrant referred to in subsection (4)(a), or the form of warrant completed under subsection (4)(b), is a duplicate of, and has the same force and effect as, the original warrant.
- (6) The inspector must, as soon as is reasonably practicable, send to the JP —
  - (a) the written application complying with section 167(3) (with the oath administered); and
  - (b) if the inspector completed a form of warrant under subsection (4)(b) — the completed form of warrant.

- (7) On receiving any document under subsection (6), the JP must attach it to the original warrant.
- (8) Despite subsection (5), if —
  - (a) an issue arises in a proceeding about whether anything done was authorised because of an entry warrant issued under this section; and
  - (b) the original warrant is not produced in evidence,the onus of proof is on the person relying on the lawfulness of the thing done to prove that it was authorised because of an entry warrant.

**167B. Effect and execution of entry warrant**

- (1) An entry warrant has effect according to its content and this section.
- (2) An entry warrant comes into force when it is issued by the JP.
- (3) An entry warrant authorises the inspector executing the warrant to enter the place described in the warrant during the period of the warrant.
- (4) An entry warrant may be executed by the inspector to whom it is issued or by any other inspector.
- (5) An inspector executing an entry warrant at a place must, at the reasonable request of a person at the place, produce the warrant or a copy of it.
- (6) An inspector (including an assistant under section 167D) may use force, other than force against a person, that is reasonably necessary in the circumstances when executing an entry warrant.
- (7) An inspector executing an entry warrant may call on the assistance of a police officer who, in providing assistance, may use force, including force against a person, that is reasonably necessary in the circumstances.



**167C. General powers when executing entry warrant**

- (1) An inspector who enters a place under an entry warrant may, for the purpose for which the warrant is issued and otherwise subject to the contents of the warrant, do all or any of the following —
- (a) inspect, examine and make inquiries at the place;
  - (b) inspect and examine anything (including a document) at the place;
  - (c) bring to the place and use any equipment or materials that may be required;
  - (d) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);
  - (e) take and remove for analysis, testing or examination a sample of any substance or thing without paying for it;
  - (f) search at the place for any thing, or any class of things, to which this paragraph applies as stated in the warrant under section 167(5)(c);
  - (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) make any reasonable use of any equipment, facilities or services at the place and for that purpose —
    - (i) operate the equipment or facilities;
    - (ii) require a person at the place to do anything that is reasonable and necessary to facilitate that use;
  - (i) if the inspector reasonably suspects that any document, or any document of a class, to which this paragraph applies as stated in the warrant under section 167(5)(d)

is stored on, or can be accessed or recovered from, a computer or other device at the place (the *device*) —

- (i) access and operate the device to search for, access, recover, download, print out, copy or reproduce the document;
  - (ii) require any person at the place who has, or appears to have, control of the device, or knowledge of how the device can be accessed or operated, to give the inspector any code, password or other information that is reasonable and necessary for accessing or operating the device as referred to in subparagraph (i);
  - (j) exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of this Act.
- (2) A person on whom a requirement is imposed under subsection (1)(g) must not refuse or fail to comply with the requirement.
- Penalty for this subsection:
- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (3) A person on whom a requirement is imposed under subsection (1)(h)(ii) or (i)(ii) must not, without reasonable excuse, refuse or fail to comply with the requirement.
- Penalty for this subsection:
- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (4) Subsection (3) places an evidential burden on the accused to show a reasonable excuse.

**167D. Persons assisting inspectors**

- (1) A person (the *assistant*), including an interpreter, may accompany an inspector entering a place under an entry warrant to assist the inspector if the inspector considers the assistance is necessary.
- (2) The assistant —
  - (a) may do the things at the place and in the manner that the inspector reasonably requires to assist the inspector to exercise compliance powers; but
  - (b) must not do anything that the inspector does not have power to do.
- (3) Anything done lawfully by the assistant is taken to have been done by the inspector.

**168. Not used**

**169. Not used**

**Subdivision 3 — Limitation on entry powers**

**170. Places used for residential purposes**

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

- (a) with the consent of a person who —
  - (i) has apparent management or control of the part of the place used only for residential purposes; or
  - (ii) is apparently an occupier of that part of the place;
- or
- (b) under the authority conferred by an entry warrant issued under Subdivision 2; or

- (c) for the purpose only of gaining access to a suspected workplace, but only —
  - (i) if the inspector reasonably believes that no reasonable alternative access is available; and
  - (ii) at a reasonable time having regard to the times at which the inspector believes work is being carried out at the place to which access is sought.

#### **Division 4 — Powers relating to documents and information**

##### **171. Power to require documents and answers to questions**

- (1) An inspector may, for the purposes of this Act, do the following (after entering a place under Division 3 or at any other time) —
  - (a) require a person to tell an inspector who has custody of, or access to, a document;
  - (b) require a person who has custody of, or access to, a document to provide that document, or a copy or reproduction of that document, to an inspector —
    - (i) while the inspector is at a place entered under Division 3; or
    - (ii) within a specified period;
  - (c) require a person —
    - (i) to submit to an interview with an inspector at a reasonable time and place, and in the way, determined by that inspector; and
    - (ii) to answer any questions put by that inspector during the interview; and
    - (iii) if and as directed by that inspector, to verify any answers given by statutory declaration;
  - (d) require a person —
    - (i) to answer, within a specified period and in a specified way, any questions put by an inspector otherwise than by way of an interview; and

- (ii) if and as directed by that inspector, verify any answers given by statutory declaration.

Notes for this subsection:

1. For the purposes of paragraph (c)(i), an interview may be conducted, for example, face-to-face or by telephone or by using audiovisual or other electronic means.
  2. For the purposes of paragraph (d)(i), questions may be put and answers required to be given, for example, by letter or by using electronic means.
- (2) Before determining the time and place for an interview under subsection (1)(c)(i), an inspector must make reasonable efforts to agree that time and place with the person to be interviewed.
- (3) An interview conducted under subsection (1)(c)(i) —
- (a) must be conducted in private if —
    - (i) the inspector considers it appropriate; or
    - (ii) the person being interviewed so requests;and
  - (b) may be recorded in any way the inspector considers appropriate.

Note for this subsection:

For the purposes of paragraph (b), an interview may be recorded, for example, using audio, audiovisual or electronic means.

- (4) Subsection (3)(a) does not prevent —
- (a) a person, including an interpreter, being present at the interview to assist the inspector conducting the interview if the inspector considers the assistance is necessary; or
  - (b) a representative of the person being interviewed from being present at the interview.
- (5) Subsection (3)(a) may be invoked during an interview by —
- (a) the inspector conducting the interview; or

(b) the person being interviewed,

in which case the subsection applies to the remainder of the interview.

(6) If an interview is to be recorded under subsection (3)(b), the inspector conducting the interview must, beforehand, inform the person being interviewed —

(a) that the recording will be done; and

(b) of the way in which the recording will be done.

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

Penalty for this subsection:

(a) for an individual, a fine of \$12 500;

(b) for a body corporate, a fine of \$55 000.

Note for this subsection:

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

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

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

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

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

**173. Warning to be given**

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

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

- (1) An inspector may —
  - (a) make copies or reproductions of, or take extracts from, a document provided to, or otherwise obtained, accessed or recovered by, an inspector under this Act; and
  - (b) keep that document for the period that an inspector considers necessary.
- (2) While an inspector retains custody of the original of a document, the inspector must permit the following persons to

inspect, or make copies of, the original document at all reasonable times —

- (a) the person who provided the original document or from whom it was obtained;
- (b) the owner of the original document;
- (c) a person authorised in writing by a person referred to in paragraph (a) or (b) on the production of the written authorisation to the regulator.

### **Division 5 — Seizure**

#### **175. Power to seize things**

- (1) An inspector who enters a place under Division 3 may seize anything (including a document) at the place if the inspector reasonably believes —
  - (a) that the thing is evidence of an offence against this Act; or
  - (b) that the seizure of the thing is reasonably necessary to enable the thing to be inspected, examined, analysed or tested; or
  - (c) that the seizure of the thing is otherwise reasonably necessary to enable an inspector to exercise compliance powers.
- (2) An inspector who enters a place under Division 3 Subdivision 2 may also seize the following at the place —
  - (a) any thing, or any thing of a class, to which section 167C(1)(f) applies as stated in the entry warrant under section 167(5)(c);
  - (b) any document, or any document of a class, to which section 167C(1)(i) applies as stated in the entry warrant under section 167(5)(d);
  - (c) any print out, copy or reproduction of any document, or of any document of a class, to which section 167C(1)(i)



applies as stated in the entry warrant under section 167(5)(d);

- (d) if the inspector reasonably suspects that any document, or any document of a class, to which section 167C(1)(i) applies as stated in the entry warrant under section 167(5)(d) is stored on, or can be accessed or recovered from, a computer or other device — the computer or other device if it is reasonably necessary to seize the computer or other device in order to access and operate it as referred to in section 167C(1)(i)(i).
- (3) If a computer or other device is seized under subsection (2)(d) —
- (a) an inspector may access and operate the computer or other device as referred to in section 167C(1)(i)(i); and
  - (b) an inspector may seize any thing of the kind referred to in subsection (2)(b) or (c) that is stored on, or accessed or recovered from, or otherwise obtained by accessing and operating, the computer or other device.

**176. Inspector’s power to seize dangerous workplaces and things**

- (1) This section applies if an inspector who enters a workplace under Division 3 reasonably believes that —
- (a) the workplace or any part of the workplace; or
  - (b) plant at the workplace or any part of plant at the workplace; or
  - (c) a substance at the workplace; or
  - (d) a structure at the workplace,
- is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.
- (2) The inspector may seize the workplace or part, the plant or part, the substance or the structure.

**177. Powers supporting seizure**

- (1) Having seized a thing, an inspector may —
- (a) move the thing from the place where it was seized (the *place of seizure*); or
  - (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or
  - (c) if the thing is plant or a structure — dismantle or cause to be dismantled the plant or structure.

Note for this subsection:

For the purposes of paragraph (b), the following are examples of reasonable action to restrict access —

- (a) sealing a thing and marking it to show access to it is restricted;
  - (b) sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.
- (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 for this subsection:

- (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (3) To enable a thing to be seized, an inspector may require the person in control of it —
- (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (4) The requirement —
- (a) must be made by written notice; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

- (5) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.
- (6) The person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (3) or (5).  
Penalty for this subsection:
  - (a) for an individual, a fine of \$12 500;
  - (b) for a body corporate, a fine of \$55 000.
- (7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

**178. Receipt for seized things**

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

**178A. Inspecting, examining, analysing and testing seized things**

An inspector may inspect, examine, analyse or test a seized thing or arrange for another person to do so.

**179.    Forfeiture of seized things**

- (1) A seized thing is forfeited to the State if the regulator —
  - (a) cannot find the person entitled to the thing after making reasonable inquiries; or
  - (b) cannot return it to the person entitled to it after making reasonable efforts; or
  - (c) reasonably believes it is necessary to forfeit the thing to prevent it being used to commit an offence against this Act.
- (2) Subsection (1)(a) does not require the regulator to make inquiries if it would be unreasonable to make inquiries to find the person entitled to the thing.
- (3) Subsection (1)(b) does not require the regulator to make efforts if it would be unreasonable to make efforts to return the thing to the person entitled to it.
- (4) If the regulator decides to forfeit the thing under subsection (1)(c), the regulator must tell the person entitled to the thing of the decision by written notice.
- (5) Subsection (4) does not apply if —
  - (a) the regulator cannot find the person entitled to the thing after making reasonable inquiries; or
  - (b) it is impracticable or would be unreasonable to give the notice.
- (6) The notice must state —
  - (a) the reasons for the decision; and
  - (b) that the person entitled to the thing may apply within 28 days after the date of the notice for the decision to be reviewed; and
  - (c) how the person may apply for the review; and
  - (d) that the person may apply for a stay of the decision if the person applies for a review.

- (7) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.
- (8) Any costs reasonably incurred by the State in storing or disposing of a thing forfeited under subsection (1)(c) may be recovered by the regulator in a court of competent jurisdiction as a debt due to the State from that person.
- (9) In this section —  
*person entitled*, in relation to a seized thing, means the person from whom it was seized unless that person is not entitled to possess it in which case it means the owner of the thing.

**180. Return of seized things**

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

**181. Access to seized things**

- (1) Until a seized thing is forfeited or returned, the regulator must permit the following persons to inspect it and, if it is a document, to make copies of it at all reasonable times —
  - (a) the person from whom the thing was seized;
  - (b) the owner of the thing;
  - (c) a person authorised in writing by a person referred to in paragraph (a) or (b) on the production of the written authorisation to the regulator.
- (2) Subsection (1) does not apply if —
  - (a) it is impracticable or would be unreasonable to allow inspection or copying; or
  - (b) the seized thing is, or provides, evidence of an offence against this Act.

**Division 6 — Damage**

**182. Damage etc. to be minimised**

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

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

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

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

**184. Not used**

**Division 7 — Other matters**

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

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

- (3) If the inspector reasonably believes that the name or residential address is false, the inspector may require the person to give evidence of its correctness.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1) or (3).  
Penalty for this subsection: a fine of \$12 500.
- (5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

**186. Inspector may take affidavits**

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

**187. Not used**

**Division 8 — Offences in relation to inspectors**

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

A person must not hinder or obstruct an inspector in exercising the inspector's compliance powers, or induce or attempt to induce any other person to do so.

Penalty:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

**189. Offence to impersonate inspector**

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

Penalty: a fine of \$12 500.



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

- (1) In this section —  
*assault* has the meaning given in section 222 of *The Criminal Code*.
- (2) 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 for this subsection:

- (a) for an individual, imprisonment for 2 years and a fine of \$55 000;
- (b) for a body corporate, a fine of \$285 000.

## **Part 10 — Enforcement measures**

### **Division 1 — Improvement notices**

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

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

#### **192. Contents of improvement notice**

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

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

**193. Compliance with improvement notice**

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

Penalty for this subsection:

- (a) for an individual, a fine of \$55 000;
  - (b) for a body corporate, a fine of \$285 000.
- (2) The person to whom an improvement notice is issued must, as soon as is reasonably practicable after complying with the notice, notify the regulator of that compliance.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

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

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

- (4) In this section —

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

### **Division 2 — Prohibition notices**

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

- (1) This section applies if an inspector reasonably believes that —
- (a) an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; or
  - (b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.
- (2) The inspector may give a person who the inspector reasonably believes 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.
- (4) An inspector cannot give a direction if compliance with the direction would affect adversely, or could reasonably be expected to affect adversely, a covert operation or a dangerous operation.

**196. Contents of prohibition notice**

- (1) A prohibition notice must state —
  - (a) that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and
  - (b) briefly, the activity that the inspector believes involves or will involve the risk and the matters that give or will give rise to the risk.
- (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.
- (3) Without limiting section 195, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying 1 or more of the following —
  - (a) a workplace, or part of a workplace, at which the activity is not to be carried out;
  - (b) anything that is not to be used in connection with the activity;
  - (c) any procedure that is not to be followed in connection with the activity.

**197. Compliance with prohibition notice**

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

Penalty:

- (a) for an individual, a fine of \$115 000;
- (b) for a body corporate, a fine of \$570 000.

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

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

An inspector may issue a non-disturbance notice to the person with management or control of a workplace if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of an inspector's compliance powers.

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

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

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

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

Penalty for this subsection:

- (a) for an individual, a fine of \$55 000;  
(b) for a body corporate, a fine of \$285 000.
- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

**201. Issue of subsequent notices**

If an inspector considers it necessary to do so, the inspector may issue 1 or more subsequent non-disturbance notices to a person, whether before or after the expiry of the previous notice, each of which must comply with section 199.

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

**202. Application of Division**

In this Division —

*notice* means improvement notice, prohibition notice or non-disturbance notice.

**203. Notice to be in writing**

A notice must be in writing.

**204. Directions in notices**

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

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

**205. Recommendations in notice**

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

**206. Changes to notice by inspector**

An inspector may make minor changes to a notice —

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

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

The regulator may do the following —

- (a) extend the compliance period for an improvement notice in accordance with section 194;
- (b) vary any other aspect of an improvement notice or vary any other notice;
- (c) cancel a notice.

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

A notice is not invalid only because of —

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



**209. Issue and giving of notice**

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

**210. Display of notice**

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

Penalty for this subsection:

- (a) for an individual, a fine of \$5 500;
- (b) for a body corporate, a fine of \$30 000.

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

Penalty for this subsection:

- (a) for an individual, a fine of \$5 500;
- (b) for a body corporate, a fine of \$30 000.

### **Division 5 — Remedial action**

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

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

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

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

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

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

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

as a debt due to the State.

**Division 6 — Not used**

**214. Not used**

**215. Not used**

## **Part 11 — Enforceable undertakings**

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

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

Note for this subsection:

Section 230(2) requires the regulator to publish guidelines in relation to the acceptance of WHS undertakings.

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

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

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

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

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

**219. Compliance with WHS undertaking**

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

Penalty:

- (a) for an individual, a fine of \$55 000;
- (b) for a body corporate, a fine of \$285 000.

**220. Contravention of WHS undertaking**

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

Note for this subsection:

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

**s. 221**

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- (5) Nothing in this section prevents proceedings being brought for an offence against section 219.

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

- (1) A person who has made a WHS undertaking may at any time, with the written agreement of the regulator —
- (a) withdraw the undertaking; or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
- (3) The regulator must publish, on the regulator's website, notice of the withdrawal or variation of a WHS undertaking.

**222. Proceeding for alleged contravention**

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

## Part 12 — Review of decisions

### Division 1 — Reviewable decisions

#### 223. Which decisions are reviewable

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

**Table**

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

<b>Item</b>	<b>Provision under which reviewable decision is made</b>	<b>Eligible person in relation to reviewable decision</b>
2.	Section 72(6) (decision in relation to training of health and safety representative)	<p>A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>A health and safety representative whose interests are affected by the decision.</p>
3.	Section 76(8) (decision relating to health and safety committee)	<p>A worker whose interests are affected by the decision.</p> <p>A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>A health and safety representative who represents a worker whose interests are affected by the decision.</p>
4.	Section 82(3) or (5) (decision resolving issue or refusal of request to appoint inspector to resolve issue)	<p>A worker whose interests are affected by the decision.</p> <p>A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>A health and safety representative who represents a worker whose interests are affected by the decision.</p>



<b>Item</b>	<b>Provision under which reviewable decision is made</b>	<b>Eligible person in relation to reviewable decision</b>
5.	Section 102 (decision on review of provisional improvement notice)	<p>The person to whom the provisional improvement notice was issued.</p> <p>The health and safety representative who issued the provisional improvement notice.</p> <p>A worker whose interests are affected by the decision.</p> <p>A health and safety representative who represents a worker whose interests are affected by the decision.</p> <p>A person conducting a business or undertaking whose interests are affected by the decision.</p>
6.	Section 155A(6)(b) (decision to withhold approval of legal practitioner on other reasonable grounds)	The witness.
7.	Section 179 (forfeiture of seized thing)	The person entitled to the thing.
8.	Section 180 (return of seized things)	The person entitled to the thing.

<b>Item</b>	<b>Provision under which reviewable decision is made</b>	<b>Eligible person in relation to reviewable decision</b>
9.	Section 191 (issue of improvement notice)	<p>The person to whom the notice was issued.</p> <p>A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>A worker whose interests are affected by the decision.</p> <p>A health and safety representative who represents a worker whose interests are affected by the decision.</p>
10.	Section 194 (extension of time for compliance with improvement notice)	<p>The person to whom the notice was issued.</p> <p>A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>A worker whose interests are affected by the decision.</p> <p>A health and safety representative who represents a worker whose interests are affected by the decision.</p>

<b>Item</b>	<b>Provision under which reviewable decision is made</b>	<b>Eligible person in relation to reviewable decision</b>
11.	Section 195 (issue of prohibition notice)	<p>The person to whom the notice was issued.</p> <p>The person with management or control of the workplace, plant or substance.</p> <p>A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>A worker whose interests are affected by the decision.</p> <p>A health and safety representative who represents a worker whose interests are affected by the decision.</p> <p>A health and safety representative who gave a direction under section 85 to cease work that is relevant to the prohibition notice.</p>
12.	Section 198 (issue of a non-disturbance notice)	<p>The person to whom the notice was issued.</p> <p>The person with management or control of the workplace.</p> <p>A person conducting a business or undertaking whose interests are affected by the decision.</p>

<b>Item</b>	<b>Provision under which reviewable decision is made</b>	<b>Eligible person in relation to reviewable decision</b>
		<p>A worker whose interests are affected by the decision.</p> <p>A health and safety representative who represents a worker whose interests are affected by the decision.</p>
13.	Section 201 (issue of subsequent notice)	<p>The person to whom the notice was issued.</p> <p>The person with management or control of the workplace.</p> <p>A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>A worker whose interests are affected by the decision.</p> <p>A health and safety representative who represents a worker whose interests are affected by the decision.</p>

<b>Item</b>	<b>Provision under which reviewable decision is made</b>	<b>Eligible person in relation to reviewable decision</b>
14.	Section 207 (decision of regulator to vary or cancel notice)	<p>The person to whom the notice was issued.</p> <p>The person with management or control of the workplace.</p> <p>A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>A worker whose interests are affected by the decision.</p> <p>A health and safety representative who represents a worker whose interests are affected by the decision.</p> <p>In the case of a prohibition notice, a health and safety representative whose direction under section 85 to cease work gave rise to the notice.</p>
15.	A prescribed provision of the regulations	A person prescribed by the regulations as eligible to apply for review of the reviewable decision.

- (2) Subsection (3) applies if 1 or more eligible persons in relation to a reviewable decision are members of a union when the reviewable decision is made.

- (3) The union —
- (a) is also an *eligible person* in relation to the reviewable decision; and
  - (b) may make, as the case may be —
    - (i) an application under Division 2 or 3 on behalf of the member who is an eligible person; or
    - (ii) a single application under Division 2 or 3 on behalf of all, or any number, of the members who are eligible persons.
- (4) Unless the contrary intention appears, a reference in this Part to a decision includes a reference to —
- (a) making, suspending, revoking or refusing to make an order, determination or decision; or
  - (b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission; or
  - (c) issuing, suspending, revoking or refusing to issue an authorisation; or
  - (d) imposing a condition; or
  - (e) making a declaration, demand or requirement; or
  - (f) retaining, or refusing to deliver up, a thing; or
  - (g) doing or refusing to do any other act or thing.
- (5) In this section —
- person entitled*, in relation to a seized thing, means the person from whom it was seized unless that person is not entitled to possess it, in which case it means the owner of the thing.

Note for this section:

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



## **Division 2 — Internal review**

### **224. Application for internal review**

- (1) An eligible person in relation to a reviewable decision may apply to the regulator for review (an *internal review*) of the decision within —
  - (a) the prescribed time after the day on which the decision first came to the eligible person's notice; or
  - (b) such longer period as the regulator allows.
- (2) The application must be made in the manner and form required by the regulator.
- (3) For the purposes of this section, the *prescribed time* is —
  - (a) in the case of a decision to issue an improvement notice, the period specified in the notice for compliance with the notice or 14 days, whichever is the lesser; and
  - (b) in any other case, 14 days.
- (4) This section does not apply to the following reviewable decisions —
  - (a) a decision made by an inspector under section 82(3);
  - (b) a decision made by the regulator.

### **225. Internal reviewer**

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

### **226. Decision of internal reviewer**

- (1) The internal reviewer must review the reviewable decision and make a decision as soon as is reasonably practicable and within



14 days after the day on which the application for internal review is received.

- (2) The decision may be —
  - (a) to confirm or vary the reviewable decision; or
  - (b) to set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.
- (3) If the internal reviewer seeks further information from the applicant, the 14-day period ceases to run until the applicant provides the information to the internal reviewer.
- (4) The applicant must provide the further information within the time (being not less than 7 days after the day on which the request for information is made) specified by the internal reviewer in the request for information.
- (5) If the applicant does not provide the further information within the required time, the decision is taken to have been confirmed by the internal reviewer at the end of that time.
- (6) If the reviewable decision is not varied or set aside within the 14-day period, the decision is taken to have been confirmed by the internal reviewer.

**227. Decision on internal review**

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

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

**228. Stays of reviewable decisions on internal reviews**

- (1) An application for an internal review of a reviewable decision (other than a decision to issue a prohibition notice or a non-disturbance notice) stays the operation of the decision.

- (2) If an application is made for an internal review of a decision to issue a prohibition notice or a non-disturbance notice, the reviewer may stay the operation of the decision.
- (3) The reviewer may make the decision to stay the operation of a decision on the reviewer's own initiative or on the application of the applicant for review.
- (4) The reviewer must make a decision on an application for a stay within 1 day after the day on which the reviewer receives the application.
- (5) If the reviewer has not made a decision to stay a decision within the time set out in subsection (4), the reviewer is taken to have made a decision to grant a stay.
- (6) A stay of the operation of a decision pending a decision on an internal review continues until whichever of the following is the earlier —
  - (a) the end of the prescribed period for applying for an external review of the decision made on the internal review;
  - (b) an application for external review is made.

### **Division 3 — External review**

#### **229. Application for external review**

- (1) An eligible person may apply to the Tribunal for review (an *external review*) of —
  - (a) a decision made by an inspector under section 82(3); or
  - (b) a reviewable decision made by the regulator; or
  - (c) a decision made, or taken to have been made, on an internal review.

- (2) The application must be made —
  - (a) if the decision was to forfeit a thing (including a document), within 28 days after the day on which the decision first came to the applicant's notice; or
  - (b) in the case of any other decision, within 14 days after the day on which the decision first came to the applicant's notice; or
  - (c) if the regulator is required by the Tribunal to give the eligible person a statement of reasons, within 14 days after the day on which the statement is provided.

**229A. Conduct and outcome of external review**

- (1) This section applies if an application is made under section 229 for an external review of a decision.
- (2) The Tribunal must review the decision (unless the applicant withdraws or discontinues the application).
- (3) The review is to be by way of a hearing de novo, and it is not confined to matters that were before the decision-maker but may involve consideration of new material whether or not it existed at the time the decision was made.
- (4) The purpose of the review is to produce the correct and preferable decision at the time of the completion of the review.
- (5) When the review is completed, the Tribunal may —
  - (a) confirm or vary the decision; or
  - (b) set aside the decision and substitute another decision that the Tribunal considers appropriate.
- (6) Despite subsections (2) to (4), the Tribunal may, with the agreement of the applicant and the decision-maker, act under subsection (5)(a) or (b) without starting or completing the review.
- (7) Subsections (2) to (4) are also subject to Schedule 1 clause 30.

**229B. Stays of decisions subject to external review**

- (1) This section applies if an application is made under section 229 for an external review of a decision.
- (2) The Tribunal may stay the operation of the decision (wholly or partly) pending the Tribunal acting under section 229A(5)(a) or (b) or for any shorter period the Tribunal determines.
- (3) The Tribunal may cancel or vary a stay.
- (4) If the decision is a decision referred to in section 229(1)(c), if relevant, the staying of its operation does not revive the reviewable decision that was the subject of the internal review.



**231. Procedure if prosecution is not brought**

- (1) If —
- (a) a person reasonably considers that the occurrence of an act, matter or thing constitutes industrial manslaughter, a Category 1 offence or a Category 2 offence; and
  - (b) no prosecution has been brought in relation to the occurrence of the act, matter or thing after 6 months but not later than 12 months after that occurrence,
- the person may make a written request to the regulator that a prosecution be brought.
- (2) Within 3 months after the day on which the regulator receives a request the regulator must —
- (a) advise the person (in writing) —
    - (i) whether the investigation is complete; and
    - (ii) if the investigation is complete, whether a prosecution has been or will be brought or give reasons why a prosecution will not be brought;
  - and
  - (b) advise the person who the applicant believes committed the offence of the application and of the matters set out in paragraph (a).
- (3) In this section a reference to the occurrence of an act, matter or thing includes a reference to a failure in relation to an act, matter or thing.

**232. Limitation period for prosecutions**

- (1) Proceedings for an offence against this Act, other than industrial manslaughter, may be brought within the latest of the following periods to occur —
- (a) within 2 years after the offence first comes to the notice of the regulator;

- (b) within 1 year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against this Act;
  - (c) if a WHS undertaking has been given in relation to the offence, within 6 months after —
    - (i) the WHS undertaking is contravened; or
    - (ii) it comes to the notice of the regulator that the WHS undertaking has been contravened; or
    - (iii) the regulator has agreed under section 221 to the withdrawal of the WHS undertaking.
- (2) Proceedings for a Category 1 offence may be brought after the end of the applicable limitation period in subsection (1) if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.
- (3) Subsections (4) and (5) apply to proceedings (the **relevant proceedings**) against a person for a Category 1 offence, a Category 2 offence or a Category 3 offence in relation to any conduct (the **relevant conduct**).
- (4) The relevant proceedings may be brought after the end of the applicable limitation period in subsection (1) if —
- (a) either —
    - (i) the DPP has considered whether proceedings for industrial manslaughter should be brought against the person in relation to the relevant conduct or to any conduct that includes the relevant conduct, and has decided not to bring those proceedings; or
    - (ii) the DPP has discontinued proceedings for industrial manslaughter against the person in

relation to the relevant conduct or to any conduct that includes the relevant conduct;

and

- (b) the relevant proceedings are brought no later than 6 months after the day on which the DPP made that decision or discontinued those proceedings.
- (5) Despite section 230(1), the relevant proceedings may only be brought under subsection (4) by an authorised officer (as defined in the *Criminal Procedure Act 2004* section 80(1)).
- (6) A person may be convicted of an offence as provided for by section 30A(2) or (4) despite subsection (1) and section 10A(2) of *The Criminal Code*.

**232A. Admission of evidence obtained unlawfully**

- (1) This section applies to any proceedings for an offence against this Act in relation to any evidence that would, apart from this section, be inadmissible in the proceedings because it was obtained by, or as a result of, unlawful conduct.
- (2) The court may decide to admit the evidence if it is satisfied that the desirability of admitting the evidence outweighs the undesirability of admitting the evidence.
- (3) In making a decision under subsection (2), the court must take into account the following matters —
  - (a) any objection to the evidence being admitted by the person against whom the evidence may be given;
  - (b) the seriousness of the offence;
  - (c) the seriousness of the unlawful conduct;
  - (d) whether the unlawful conduct —
    - (i) was engaged in by a person knowing the conduct to be unlawful; or
    - (ii) arose from an honest and reasonable mistake of fact;



- (e) the probative value of the evidence;
  - (f) any other matter the court thinks fit.
- (4) The probative value of the evidence does not by itself justify its admission.

**233. Not used**

**Division 2 — Sentencing of offenders**

**234. Application of this Division**

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

**235. Orders generally**

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

**236. Adverse publicity orders**

- (1) The court may make an order (an *adverse publicity order*) in relation to the offender requiring the offender —
    - (a) to take either or both of the following actions within the period specified in the order —
      - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
      - (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter;
- and

- (b) to give the regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.
- (2) The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.
- (3) If the offender fails to give evidence to the regulator in accordance with subsection (1)(b), the regulator, or a person authorised in writing by the regulator, may take the action or actions specified in the order.
- (4) However, if —
  - (a) the offender gives evidence to the regulator in accordance with subsection (1)(b); and
  - (b) despite that evidence, the regulator is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order,

the regulator may apply to the court for an order authorising the regulator, or a person authorised in writing by the regulator, to take the action or actions.

- (5) If the regulator or a person authorised in writing by the regulator takes an action or actions in accordance with subsection (3) or an order under subsection (4), the regulator is entitled to recover from the offender, by action in a court of competent jurisdiction, an amount in relation to the reasonable expenses of taking the action or actions as a debt due to the State.

### **237. Orders for restoration**

- (1) The court may order the offender to take such steps as are specified in the order, within the period so specified, to remedy any matter caused by the commission of the offence that appears to the court to be within the offender's power to remedy.

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

**238. Work health and safety project orders**

- (1) The court may make an order requiring the offender to undertake a specified project for the general improvement of work health and safety within the period specified in the order.
- (2) The order may specify conditions that must be complied with in undertaking the specified project.

**239. Release on the giving of a court-ordered WHS undertaking**

- (1) The court may (with or without recording a conviction) adjourn the proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions (a ***court-ordered WHS undertaking***).
- (2) A court-ordered WHS undertaking must specify the following conditions —
- (a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned;
  - (b) that the offender does not commit, during the period of the adjournment, any offence against this Act;
  - (c) that the offender observes any special conditions imposed by the court.
- (3) An offender who has given a court-ordered WHS undertaking under this section may be called on to appear before the court by order of the court.

- (4) An order under subsection (3) must be served on the offender not less than 4 days before the time specified in it for the appearance.
- (5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the court-ordered WHS undertaking, it must discharge the offender without any further hearing of the proceeding.

**240. Not used**

**241. Training orders**

The court may make an order requiring the person to undertake or arrange for 1 or more workers to undertake a specified course of training.

**242. Offence to fail to comply with order**

- (1) A person must not, without reasonable excuse, fail to comply with an order under this Division.

Penalty for this subsection:

- (a) for an individual, a fine of \$55 000;
  - (b) for a body corporate, a fine of \$285 000.
- (2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.
  - (3) This section does not apply to an order under section 239.

**Division 3 — Not used**

**243. Not used**

### **Division 4 — Offences by bodies corporate**

#### **244. Imputing conduct to bodies corporate**

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

### **Division 5 — The Crown**

#### **Subdivision 1 — Prosecutions**

#### **244A. Crown may be prosecuted**

The Crown in any capacity may, in accordance with this Subdivision, be prosecuted for an offence against this Act.

#### **244B. Prosecution against agent of Crown that is body corporate**

- (1) If the act or omission constituting the offence is alleged against a body corporate that is an agent of the Crown, the prosecution proceedings must be taken against the body corporate.

- (2) Subsection (1) includes a case in which a body corporate is the successor in law of a Crown agency, as defined in section 244E(1) or determined under section 244E(3).

**244C. Prosecution of Crown in other cases**

- (1) The prosecution proceedings for the offence must be taken against the Crown if the act or omission constituting the offence is alleged against a Crown agency (the *responsible agency*).
- (2) Proceedings referred to in subsection (1) may be brought against the Crown under the title “State of Western Australia”.

**244D. Provisions applicable to responsible agency**

- (1) In this section —  
*prosecution proceedings* means proceedings referred to in section 244C(1).
- (2) For the purposes of prosecution proceedings —
- (a) the responsible agency —
- (i) must be specified in the prosecution notice or indictment for the offence; and
- (ii) is entitled to act for the Crown in the proceedings; and
- (iii) subject to any rules of court, has the procedural rights and obligations of the Crown as the accused in the proceedings;
- and
- (b) the person prosecuting the offence may during the proceedings, with the leave of the court, substitute another responsible agency for the agency in the proceedings.
- (3) In prosecution proceedings a person authorised by the chief executive of the responsible agency concerned may act on



- (b) there is doubt as to which agent of the Crown has the relevant functions formerly vested in the Crown agency.

**244F. Penalties in proceedings against Crown**

- (1) The penalty that may be imposed on the Crown if it is convicted or found guilty of an offence against this Act in proceedings referred to in section 244C(1) is the penalty applicable to a body corporate.
- (2) A penalty imposed in proceedings referred to in section 244C(1) cannot be enforced under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

**Subdivision 2 — Other matters**

**244G. Issue of notices to Crown**

- (1) In this section —  
*notice* means a provisional improvement notice, an improvement notice, a prohibition notice or a non-disturbance notice.
- (2) A notice that relates to a contravention of this Act, or other activity, of a body corporate that is an agent of the Crown must be issued to that body corporate.
- (3) If a notice relates to a contravention of this Act, or other activity, of the Crown in any other case, the notice —
  - (a) must be issued to the Crown under the title “State of Western Australia”; and
  - (b) must show the name of the responsible agency under Subdivision 1 that would be specified in a charge for an offence for the contravention or other activity.





- (5) If the offence requires proof of knowledge or intention, it is sufficient in the proceedings to prove that the person referred to in subsection (2) had the relevant knowledge or intention.
- (6) If for the offence mistake of fact is relevant to determining liability, it is sufficient in the proceedings if the person referred to in subsection (2) made that mistake of fact.

**245. Not used**

**246. Not used**

**247. Not used**

**248. Not used**

**Division 6 — Not used**

**249. Not used**

**250. Not used**

**251. Not used**

**252. Not used**

**253. Not used**

**Division 7 — Not used**

**254. Not used**

**255. Not used**

**256. Not used**

**257. Not used**

**258. Not used**

**259. Not used**

**260. Not used**

**261. Not used**

**262. Not used**

**263. Not used**

**264. Not used**

**265. Not used**

**266. Not used**

### **Division 8 — Civil liability not affected by this Act**

**267. Civil liability not affected by this Act**

Except as provided in Part 6, nothing in this Act is to be construed as —

- (a) conferring a right of action in civil proceedings in relation to a contravention of a provision of this Act; or
- (b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or
- (c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be brought, in relation to breaches of duties or obligations imposed by the regulations.

## **Part 14 — General**

### **Division 1 — General provisions**

#### **268. Offence to give false or misleading information**

- (1) A person must not give information in complying or purportedly complying with this Act that the person knows —
- (a) to be false or misleading in a material particular; or
  - (b) omits any matter or thing without which the information is misleading.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

- (2) A person must not provide 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 how the document is false or misleading and, if practicable, providing correct information; or
- (b) accompanying the document with a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate —
  - (i) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
  - (ii) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

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

**269. Act does not affect legal professional privilege**

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

**270. Immunity from liability**

- (1) A person has no civil liability for anything done, or omitted to be done, by the person, in good faith, as a WHS authority —
- (a) in the exercise or purported exercise of a power, or in the performance or purported performance of a function, under this Act; or
  - (b) otherwise in the administration of this Act.
- (2) A civil liability that would, but for subsection (1), attach to a person attaches instead to the State.

**271. Confidentiality of information**

- (1) This section applies if a person obtains information or gains access to a document in exercising or performing any power or function under this Act.
- (2) The person must not do any of the following —
- (a) disclose to anyone else —
    - (i) the information; or
    - (ii) the contents of, or information contained in, the document;
  - (b) give access to the document to anyone else;

- (c) use the information or document for any purpose.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

- (3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document —

- (a) about a person, with the person's consent; or
- (b) that is necessary for the exercise or performance of a power or function under this Act; or
- (c) that is made or given by the regulator or a person authorised by the regulator if the regulator reasonably believes the disclosure, access or use —
  - (i) is necessary for administering, or monitoring or enforcing compliance with, this Act; or
  - (ii) is necessary for the administration or enforcement of another Act prescribed by the regulations; or
  - (iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or
  - (iv) is necessary for the recognition of authorisations under a corresponding WHS law; or
  - (v) is required for the exercise or performance of a power or function under a corresponding WHS law;

or

- (d) that is required by any court, tribunal, authority or person having lawful authority to require the provision of documents or the answering of questions; or

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

Penalty for this subsection:

- (a) for an individual, a fine of \$12 500;
- (b) for a body corporate, a fine of \$55 000.

**272. No contracting out**

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or any duty owed under this Act or to transfer to another person any duty owed under this Act is of no effect.

**272A. No insurance or other indemnities against fines**

- (1) In this section —  
*indemnify* means indemnify wholly or partly;  
*insurance policy* includes any contract of insurance.
- (2) An insurance policy is of no effect to the extent that, apart from this subsection, it would indemnify a person for the person's liability to pay a fine for an offence against this Act.
- (3) A person (A) must not —
  - (a) enter into, or offer to enter into, an insurance policy that purports to indemnify a person for the person's liability to pay a fine for an offence against this Act; or

- (b) indemnify, or offer to indemnify, another person for the other person's liability to pay a fine for an offence against this Act; or
- (c) be indemnified, or agree to be indemnified, by another person for A's liability to pay a fine for an offence against this Act; or
- (d) pay to another person, or receive from another person, an indemnity for a fine for an offence against this Act.

Penalty for this subsection:

- (a) for an individual, a fine of \$51 000;
- (b) for a body corporate, a fine of \$255 000.

**273. Person not to levy workers**

A person conducting a business or undertaking must not impose a levy or charge on a worker, or permit a levy or charge to be imposed on a worker, for anything done, or provided, in relation to work health and safety.

Penalty:

- (a) for an individual, a fine of \$5 500;
- (b) for a body corporate, a fine of \$30 000.

**Division 2 — Codes of practice**

**274. Approved codes of practice**

- (1) The Minister may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.
- (2) The Minister may only approve, vary or revoke a code of practice under subsection (1) if that code of practice, variation or revocation was developed by a process that involved consultation between —
  - (a) unions; and
  - (b) employer organisations.



- (3) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether —
- (a) with or without modification; or
  - (b) as in force at a particular time or from time to time.
- (4) An approval of a code of practice, or a variation or revocation of an approved code of practice, takes effect when notice of it is published in the *Gazette* or on such later date as is specified in the approval, variation or revocation.
- (5) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Minister must ensure that notice of the approval, variation or revocation is published in the *Gazette* and a newspaper circulating generally throughout the State.
- (6) The regulator must ensure that a copy of —
- (a) each code of practice that is currently approved; and
  - (b) each document applied, adopted or incorporated (to any extent) by an approved code of practice,
- is available for inspection by members of the public without charge at the office of the regulator during normal business hours.
- (7) The Minister must make available on the WHS department's website, without charge —
- (a) a copy of each code of practice that is currently approved; and
  - (b) the identity of each document applied, adopted or incorporated (to any extent) by an approved code of practice and, unless doing so would infringe copyright, a copy of that document.

**275. Use of codes of practice in proceedings**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.
- (3) The court may —
  - (a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and
  - (b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Note for this subsection:

See section 18 for the meaning of *reasonably practicable*.

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

**Division 3 — Regulation-making powers**

**276. Regulation-making powers**

- (1) The Governor may make regulations in relation to —
  - (a) any matter relating to work health and safety; and
  - (b) any matter or thing required or permitted by this Act to be prescribed or that is necessary or convenient to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or in relation to matters set out in Schedule 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 as in force or remade from time to time;
- or
- (e) prescribe exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed; or
  - (f) allow the regulator to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the regulator; or
  - (g) prescribe fees for doing any act or providing any service for the purposes of this Act and prescribe the circumstances and way in which fees can be refunded, waived or reduced; or
  - (h) provide for offences against the regulations and prescribe penalties for those offences not exceeding a fine of \$35 000.

**Division 4 — Review of Act**

**277.    Operation of Act to be reviewed every 5 years**

- (1) The Minister must review the operation and effectiveness of this Act and prepare a report based on the review —
  - (a) as soon as practicable after the 5<sup>th</sup> anniversary of the day on which this section comes into operation; and
  - (b) after that, at intervals of no more than 5 years.

Note for this subsection:

A review must include a consideration of the most recent review of the model Bill referred to in note 1 for section 3.

- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5<sup>th</sup> anniversary or the expiry of the period of 5 years, as the case may be.
- (3) If, in the Minister's opinion, a House of Parliament will not sit during the period of 21 days after finalisation of the report, the Minister must send the report to the Clerk of the House.
- (4) When the report is sent to the Clerk of a House it is taken to have been laid before the House.
- (5) The laying of the report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the report.

## **Part 15 — Repeals and consequential amendments**

### **Division 1 — Occupational safety and health legislation**

**278. *Occupational Safety and Health Act 1984* repealed**

The *Occupational Safety and Health Act 1984* is repealed.

**279. *Occupational Safety and Health Regulations 1996* repealed**

The *Occupational Safety and Health Regulations 1996* are repealed.

### **Division 2 — Mines safety and inspection legislation**

#### **Subdivision 1 — *Mines Safety and Inspection Act 1994* amended**

**280. Act amended**

This Subdivision amends the *Mines Safety and Inspection Act 1994*.

**281. Section 3 deleted**

Delete section 3.

**282. Section 4 amended**

- (1) In section 4(1) delete the definitions of:

*adit*

*alternate registered manager*

*Australian Standard*

*Australian/New Zealand Standard*

*Board of Examiners*

*certificate of competency*

*commute schedule*

*competent person*

*decline*

*deputy*

*development*

*development opening* or *development heading*

*district inspector*

*Electoral Commissioner*

*exploration manager*

*explosives*

*foreman*

*hazard*

*hoist*

*import*

*improvement notice*

*incline*

*inspector*

*manager*

*Mines Survey Board*

*Mining Industry Advisory Committee*

*plan*

*plant*

*practicable*

*prohibition notice*

*provisional improvement notice*

*quarry* or *open cut* or *open pit*

*quarry manager*

*quarry operations*

*radiation*

*radioactive*

*receiver*  
*record book*  
*registered manager*  
*repealed Acts*  
*rise*  
*risk*  
*safety and health committee*  
*safety and health magistrate*  
*safety and health representative*  
*senior inspector*  
*shaft*  
*special inspector*  
*State coal mining engineer*  
*State mining engineer*  
*supervisor*  
*supply*  
*trade union*  
*Tribunal*  
*tunnel or adit*  
*underground*  
*underground manager*  
*underground superintendent*  
*winding engine*  
*winze*  
*workmen's inspector*  
*workplace*

- (2) In section 4(1) insert in alphabetical order:

*inspector* means an inspector appointed under the *Work Health and Safety Act 2020* Part 9;

*regulator* has the meaning given in the *Work Health and Safety Act 2020* section 4;

- (3) In section 4(1) in the definition of *mine* delete “State mining engineer” and insert:

regulator

- (4) In section 4(1) in the definition of *principal employer*:

- (a) in paragraph (a) delete “mine, mining operations at the mine and the manager of the mine; and” and insert:

mine and mining operations at the mine; and

- (b) in paragraph (b) delete “mine and the exploration manager appointed for those operations;” and insert:

mine;

- (5) In section 4(3) delete “State mining engineer” and insert:

regulator

- (6) Delete section 4(4).

**283. Section 4A deleted**

Delete section 4A.



**284. Section 6A deleted**

Delete section 6A.

**285. Section 7 amended**

Delete section 7(1).

**286. Parts 2 to 8 deleted**

Delete Parts 2 to 8.

**287. Sections 94 and 95 deleted**

Delete sections 94 and 95.

**288. Section 96A deleted**

Delete section 96A.

**289. Sections 98 to 99A deleted**

Delete sections 98 to 99A.

**290. Section 100 amended**

- (1) In section 100(1) delete “Act, other than an offence to which section 100A applies,” and insert:

Act

- (2) In section 100(2) delete “and section 100A apply” and insert:

applies

**291. Sections 100A and 101 deleted**

Delete sections 100A and 101.

**292. Part 9 Divisions 2 and 3 deleted**

Delete Part 9 Divisions 2 and 3.

**293. Sections 102A and 103 deleted**

Delete sections 102A and 103.

**294. Section 104 amended**

(1) In section 104(1) —

(a) delete “Act, and in particular —” and insert:

Act.

(b) delete paragraphs (a) to (zo).

(2) Delete section 104(1a).

(3) In section 104(4):

(a) delete paragraph (a);

(b) in paragraph (b) delete “individual where paragraph (a) does not apply —” and insert:

individual —

(c) in paragraph (c)(ii) delete “\$62 500,” and insert:

\$62 500.

(d) delete the passage that begins with “and if the offence” and continues to the end of the subsection.

(4) Delete section 104(4a) and (5).

**295. Section 105A amended**

- (1) In section 105A(1) delete “this Act.” and insert:

the following —

- (a) the *Work Health and Safety Act 2020* in relation to mines and mining operations;
  - (b) this Act.
- (2) Delete section 105A(2).
- (3) In section 105A(4)(b) delete “this Act” and insert:

the *Work Health and Safety Act 2020*

Note: The heading to amended section 105A is to read:

**Regulations for levy for costs of administering *Work Health and Safety Act 2020* in relation to mines and mining operations**

**296. Section 105AB amended**

In section 105AB(3) delete “this Act.” and insert:

the following —

- (a) the *Work Health and Safety Act 2020* in relation to mines and mining operations;
- (b) this Act.

**297. Sections 105 to 110 deleted**

Delete sections 105 to 110.

**Subdivision 2 — *Mines Safety and Inspection Regulations 1995*  
repealed**

**298. *Mines Safety and Inspection Regulations 1995* repealed**

The *Mines Safety and Inspection Regulations 1995* are repealed.

**Division 3 — Petroleum and geothermal energy legislation**

**Subdivision 1 — *Petroleum and Geothermal Energy Resources  
Act 1967* amended**

**299. Act amended**

This Subdivision amends the *Petroleum and Geothermal Energy Resources Act 1967*.

**300. Section 5 amended**

- (1) In section 5(1) delete the definition of *listed OSH law*.
- (2) In section 5(1) delete both definitions of *other protected person*.

**301. Section 7AA deleted**

Delete section 7AA.

**302. Section 112A amended**

- (1) In section 112A(1) delete “a *safety*” and insert:

an *exclusion*

- (2) In section 112A(2) delete “A *safety*” and insert:

An *exclusion*

(3) In section 112A(3) delete “a safety” and insert:

an exclusion

Note: The heading to amended section 112A is to read:

**Exclusion zones**

**303. Section 119 amended**

In section 119(1) delete “but without affecting the powers of an inspector under Schedule 1,”.

**304. Section 126A amended**

Delete section 126A(2)(b) and (c) and insert:

- (b) the authority of any person to institute a proceeding for an offence against this Act.

**305. Part IIIA deleted**

Delete Part IIIA.

**306. Section 153 amended**

In section 153(2)(1) delete “safety”.

**307. Schedule 1 deleted**

Delete Schedule 1.

**Subdivision 2 — *Petroleum and Geothermal Energy Safety Levies Act 2011* amended**

**308. Act amended**

This Subdivision amends the *Petroleum and Geothermal Energy Safety Levies Act 2011*.

**309. Long title amended**

In the long title delete “**operations, geothermal energy operations, pipeline operations and offshore petroleum operations,**” and insert:

**operations and geothermal energy operations,**

**310. Section 3 amended**

(1) In section 3 delete the definitions of:

*accepted DSMS*

*CEO*

*diving contractor*

*diving safety management system*

*DSMS levy*

*facility*

*facility safety case levy*

*geothermal energy operation*

*licensee*

*operator*

*petroleum operation*

*PGERA regulations*

*pipeline*

*pipeline licensee*

*pipeline management plan*

*pipeline management plan in force*

*pipeline management plan levy*

*pipeline operation*

*pipeline safety case levy*

***PPA regulations***

***revised pipeline management plan***

***revised safety case***

***revised safety management system***

***safety case***

***safety case in force***

***safety levy***

***safety management system***

***safety management system in force***

***safety management system levy***

(2) In section 3 insert in alphabetical order:

***adjacent area*** has the meaning given in the *Petroleum (Submerged Lands) Act 1982* section 60K and includes any space referred to in section 7 of that Act;

***CIPS*** means the Chief Inspector Petroleum Safety under the *Work Health and Safety Act 2020* Schedule 1 Division 2;

***construct*** has the meaning given in the *Work Health and Safety Act 2020* section 4;

***design*** has the meaning given in the *Work Health and Safety Act 2020* section 4;

***diving operation*** — see section 3A;

***DSMS*** — see section 3B;

***DSMS levy*** means the levy referred to in section 7;

***explore*** means to carry out a survey operation, drilling operation or other operation, other than a seismic survey, that relates to exploration for petroleum or geothermal energy resources;

**geothermal energy** has the meaning given in the *Petroleum and Geothermal Energy Resources Act 1967* section 5(1);

**geothermal energy operation** — see section 3C;

**geothermal energy resources** has the meaning given in the *Petroleum and Geothermal Energy Resources Act 1967* section 5(1);

**oil shale** includes naturally occurring hydrocarbons that are or may be contained in rocks from which they cannot be recovered otherwise than by mining those rocks as oil shale;

**petroleum** —

(a) means —

- (i) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; or
- (ii) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (iii) any naturally occurring mixture of 1 or more hydrocarbons, whether in a gaseous, liquid or solid state, and 1 or more of the following, that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide,

but does not include oil shale; and

- (b) includes any petroleum as defined in paragraph (a) that has been returned to a natural reservoir; and
- (c) also includes any petroleum as defined in paragraph (a) or (b) to which 1 or more things have been added, or from which 1 or more



things have been wholly or partly removed, or both; and

- (d) also includes any mixture that —
- (i) has been recovered from a well; and
  - (ii) includes petroleum as defined in paragraph (a), (b) or (c);

***petroleum operation*** — see section 3D;

***place*** has the meaning given in the *Work Health and Safety Act 2020* section 8(2);

***plant*** has the meaning given in the *Work Health and Safety Act 2020* section 4;

***safety case*** — see section 3E;

***safety case levy*** means the levy referred to in section 4;

***safety levy*** means the safety case levy or the DSMS levy;

***structure*** has the meaning given in the *Work Health and Safety Act 2020* section 4;

***well*** means a hole in the Earth's crust made by drilling, boring or any other means in connection with exploration for petroleum or geothermal energy resources or operations for the recovery of petroleum or geothermal energy, but does not include a seismic shot hole;

***WHS regulations*** means regulations made under the *Work Health and Safety Act 2020*;

***worker*** has the meaning given in the *Work Health and Safety Act 2020* section 7.

**311. Sections 3A to 3E inserted**

At the end of Part 1 insert:

**3A. Diving operation**

- (1) In this section —  
*manned submersible craft* —
  - (a) means a craft that is designed to maintain its occupants at or near atmospheric pressure while submerged (whether or not it is self-propelled, and whether or not it is supplied with breathing mixture through an umbilical); and
  - (b) includes a craft in the form of a suit.
- (2) A *diving operation* is a petroleum operation carried out in the adjacent area that comprises 1 or more dives.
- (3) For the purposes of subsection (2), a *dive* is an activity that involves a person (the *diver*) —
  - (a) being in a chamber inside which the ambient pressure is equal to or higher than the hydrostatic pressure at a depth of 1 metre in seawater (whether or not the chamber is submerged in water or another liquid); or
  - (b) being submerged in water or another liquid and the diver's lungs being subjected to a pressure greater than atmospheric pressure (whether or not the diver is wearing a wetsuit or other protective clothing); or
  - (c) being in a manned submersible craft that is submerged in water or another liquid.

**3B. DSMS**

- (1) In this section —  
*document* has the meaning given in the *Work Health and Safety Act 2020* section 4.
- (2) A *DSMS* is a document —
- (a) that a prescribed provision of WHS regulations requires for a diving operation; and
  - (b) that must set out, in accordance with any applicable requirements of WHS regulations, a safety management system for the diving operation.

**3C. Geothermal energy operation**

- (1) In this section —  
*accommodation premises* —
- (a) means residential premises —
    - (i) the occupation of which is necessary for the purposes of workers' engagement at a geothermal energy site; and
    - (ii) that are not situated within a townsite as defined in the *Land Administration Act 1997* section 26(1) or the metropolitan region as defined in the *Planning and Development Act 2005* section 4(1);and
  - (b) includes land, buildings and recreational facilities used in connection with the occupation of those premises;
- geothermal energy site* —
- (a) means a place at which an activity referred to in subsection (2) is, or is to be, carried out; and

- (b) includes any fixture, fitting, plant or structure at the place;

***geothermal energy title*** means a permit, drilling reservation, lease, licence or other authority (however described) granted under the *Petroleum and Geothermal Energy Resources Act 1967* in relation to geothermal energy or geothermal energy resources.

- (2) A ***geothermal energy operation*** is an activity carried out in an area in respect of which a geothermal energy title is in force for the purpose of any of the following —
  - (a) exploring for geothermal energy resources;
  - (b) drilling or servicing a well for geothermal energy resources;
  - (c) recovering geothermal energy.
- (3) Without limiting subsection (2), a ***geothermal energy operation*** includes the following activities —
  - (a) planning, designing, preparing or constructing a geothermal energy site if the activity is carried out at or in the vicinity of the geothermal energy site;
  - (b) commissioning, operating or maintaining a geothermal energy site;
  - (c) decommissioning or abandoning a geothermal energy site or removing any fixture, fitting, plant or structure from a geothermal energy site;
  - (d) constructing, commissioning, operating or maintaining administrative or other support facilities at or in the vicinity of a geothermal energy site;
  - (e) an activity relating to the care, security or maintenance of a geothermal energy site carried

out at or in the vicinity of the geothermal energy site;

- (f) constructing, commissioning, operating or maintaining accommodation premises at or in the vicinity of a geothermal energy site;
- (g) a prescribed activity carried out in an area in respect of which a geothermal energy title is in force.

**3D. Petroleum operation**

(1) In this section —

***accommodation premises*** —

- (a) means residential premises —
  - (i) the occupation of which is necessary for the purposes of workers' engagement at a petroleum site; and
  - (ii) that are not situated within a townsite as defined in the *Land Administration Act 1997* section 26(1) or the metropolitan region as defined in the *Planning and Development Act 2005* section 4(1);

and

- (b) includes land, buildings and recreational facilities used in connection with the occupation of those premises;

***petroleum site*** —

- (a) means a place at which an activity referred to in subsection (2) is, or is to be, carried out; and
- (b) includes any fixture, fitting, plant or structure at the place;

*petroleum title* means —

- (a) a permit, drilling reservation, lease, licence or other authority (however described) granted under —
    - (i) the *Petroleum and Geothermal Energy Resources Act 1967* in relation to petroleum; or
    - (ii) the *Petroleum Pipelines Act 1969*; or
    - (iii) the *Petroleum (Submerged Lands) Act 1982*;
  - or
  - (b) the Barrow Island lease as defined in the *Barrow Island Act 2003* section 3.
- (2) A ***petroleum operation*** is an activity that is carried out in an area in respect of which a petroleum title is in force, or that is carried out in the adjacent area, for the purpose of any of the following —
- (a) exploring for petroleum;
  - (b) drilling or servicing a well for petroleum;
  - (c) extracting or recovering petroleum;
  - (d) injecting petroleum into a natural underground reservoir;
  - (e) processing petroleum;
  - (f) handling or storing petroleum;
  - (g) the piped conveyance or offloading of petroleum.
- (3) Without limiting subsection (2), a ***petroleum operation*** includes the following activities —
- (a) planning, designing, preparing or constructing a petroleum site if the activity is carried out at or in the vicinity of the petroleum site;

- (b) commissioning, operating or maintaining a petroleum site;
- (c) decommissioning or abandoning a petroleum site or removing any fixture, fitting, plant or structure from a petroleum site;
- (d) constructing, commissioning, operating or maintaining administrative or other support facilities at or in the vicinity of a petroleum site;
- (e) an activity relating to the care, security or maintenance of a petroleum site carried out at or in the vicinity of the petroleum site;
- (f) constructing, commissioning, operating or maintaining accommodation premises at or in the vicinity of a petroleum site;
- (g) a prescribed activity carried out in —
  - (i) an area in respect of which a petroleum title is in force; or
  - (ii) the adjacent area.

**3E. Safety case**

- (1) In this section —

*document* has the meaning given in the *Work Health and Safety Act 2020* section 4.
- (2) A *safety case* is a document —
  - (a) that a prescribed provision of WHS regulations requires for a petroleum operation or a geothermal energy operation; and
  - (b) that must set out, in accordance with any applicable requirements of WHS regulations, a case for safety of the operation.

**312. Part 2 replaced**

Delete Part 2 and insert:

**Part 2 — Safety levies**

**Division 1 — Safety case levy**

**4. Safety case levy payable**

- (1) If, for the whole or a part of a levy period, a safety case is in force for a petroleum operation or a geothermal energy operation, a levy is payable in respect of the safety case.
- (2) The levy is payable in accordance with the regulations.
- (3) The regulations may make provision specifying, or for working out, when a safety case is in force for a petroleum operation or a geothermal energy operation.

**5. Liability for payment of safety case levy**

- (1) The person liable to pay the safety case levy is the person responsible for the safety case.
- (2) The regulations may make provision specifying, or for working out, the person responsible for a safety case.

**6. Amount of safety case levy**

- (1) The amount of safety case levy payable is the amount specified in, or worked out in accordance with, the regulations.
- (2) Without limiting section 26(3), the regulations may specify different amounts of safety case levy, or different means of working out amounts of safety case levy, for different classes of safety cases.



## **Division 2 — DSMS levy**

### **7. DSMS levy payable**

- (1) If, for the whole or a part of a levy period, a DSMS is in force for a diving operation, a levy is payable in respect of the DSMS.
- (2) The levy is payable in accordance with the regulations.
- (3) The regulations may make provision specifying, or for working out, when a DSMS is in force for a diving operation.

### **8. Liability for payment of DSMS levy**

- (1) The person liable to pay the DSMS levy is the person responsible for the DSMS.
- (2) The regulations may make provision specifying, or for working out, the person responsible for a DSMS.

### **9. Amount of DSMS levy**

- (1) The amount of DSMS levy payable is the amount specified in, or worked out in accordance with, the regulations.
- (2) Without limiting section 26(3), the regulations may specify different amounts of DSMS levy, or different means of working out amounts of DSMS levy, for different classes of DSMSs.

## **313. Section 10 amended**

- (1) In section 10 delete “CEO” (each occurrence) and insert:

CIPS

- (2) In section 10(2) delete “1969 or the *Petroleum (Submerged Lands) Act 1982.*” and insert:

*1969, the Petroleum (Submerged Lands) Act 1982 or the Work Health and Safety Act 2020.*

**314. Section 11 amended**

In section 11(2) delete “CEO.” and insert:

CIPS.

**315. Section 12 amended**

- (1) In section 12(1) delete “CEO,” and insert:

CIPS,

- (2) In section 12(2) delete “CEO” (each occurrence) and insert:

CIPS

**316. Section 13 amended**

In section 13 delete “CEO” and insert:

CIPS

**317. Section 14 amended**

In section 14(2) delete “CEO” (each occurrence) and insert:

CIPS

**318. Section 15 amended**

In section 15 delete “CEO” and insert:

CIPS

**319. Section 16 amended**

In section 16 delete “CEO” and insert:

CIPS

**320. Section 18 amended**

In section 18(1):

(a) delete “CEO,” and insert:

CIPS,

(b) in paragraph (a)(i) delete “CEO” and insert:

CIPS

Note: The heading to amended section 18 is to read:

**CIPS may require information and records**

**321. Section 21 amended**

Delete section 21(3)(b) to (d) and insert:

- (b) the *Work Health and Safety Act 2020* in relation to petroleum operations and geothermal energy operations.

**322. Section 22 amended**

- (1) In section 22(1) delete “CEO” (each occurrence) and insert:

CIPS

- (2) In section 22(2) delete “CEO.” and insert:

CIPS.

- (3) In section 22(5) delete “CEO” and insert:

CIPS

**323. Section 26 amended**

- (1) Delete section 26(2)(b) and (c).

- (2) After section 26(2) insert:

- (3) Without limiting subsection (1), the regulations may make different provision for different classes of safety cases or DSMSs and may, accordingly —

- (a) provide for the classification of safety cases or DSMSs; and

- (b) without limiting paragraph (a), authorise or require the CIPS to determine the classification of a safety case or DSMS for the purposes of the regulations.

**Subdivision 3 — *Petroleum Pipelines Act 1969* amended**

**324. Act amended**

This Subdivision amends the *Petroleum Pipelines Act 1969*.

**325. Section 4 amended**

In section 4(1) delete the definitions of:

*listed OSH law*

*other protected person*

**326. Section 5AA deleted**

Delete section 5AA.

**327. Section 32 replaced**

Delete section 32 and insert:

**32. Certain local laws not to apply to licensed pipelines**

The provisions of local laws made under the *Local Government Act 1995* in relation to the following matters do not apply to or in respect of a pipeline the construction or operation of which is authorised by a licence —

- (a) the keeping, carrying, handling and storage of dangerous things;
- (b) the use, management and maintenance of thoroughfares.

**328. Section 36 amended**

In section 36(1) delete “may be operated with safety,” and insert:

is fit to be operated,

**329. Part IVA deleted**

Delete Part IVA.

**330. Section 63 amended**

In section 63(1) delete “but without affecting the powers of an inspector under Schedule 1,”.

**331. Section 66BB amended**

Delete section 66BB(2)(b) and (c) and insert:

- (b) the authority of any person to institute a proceeding for an offence against this Act.

**332. Section 67 amended**

Delete section 67(1)(a) and insert:

- (a) the construction, maintenance and operation of pipelines;

**333. Schedule 1 deleted**

Delete Schedule 1.

**Subdivision 4 — *Petroleum (Submerged Lands) Act 1982* amended**

**334. Act amended**

This Subdivision amends the *Petroleum (Submerged Lands) Act 1982*.

**335. Section 4 amended**

- (1) In section 4(1) delete the definitions of:

*facility*

*listed OSH law*

*offshore petroleum operation*

- (2) In section 4(1) insert in alphabetical order:

*facility* has the meaning given in section 4A;

*offshore petroleum operation* has the meaning given in section 4A;

**336. Section 4A inserted**

After section 4 insert:

**4A. Meaning of facility and offshore petroleum operation**

- (1) In this section —

*accommodation premises* —

- (a) means residential premises the occupation of which is necessary for the purposes of workers' engagement at an offshore petroleum site; and
- (b) includes buildings and recreational facilities used in connection with the occupation of those premises;

***offshore petroleum site*** —

- (a) means a place at which an activity referred to in subsection (3) is, or is to be, carried out; and
- (b) includes any fixture, fitting, plant or structure at the place;

***place*** has the meaning given in the *Work Health and Safety Act 2020* section 8(2);

***plant*** has the meaning given in the *Work Health and Safety Act 2020* section 4;

***structure*** has the meaning given in the *Work Health and Safety Act 2020* section 4;

***worker*** has the meaning given in the *Work Health and Safety Act 2020* section 7.

- (2) For the purposes of this Act, a ***facility*** is a place at which offshore petroleum operations are carried out and it includes any fixture, fitting, plant or structure at the place.
- (3) For the purposes of this Act, an ***offshore petroleum operation*** is an activity carried out in the adjacent area for the purpose of any of the following —
  - (a) exploring for petroleum;
  - (b) drilling or servicing a well for petroleum;
  - (c) extracting or recovering petroleum;
  - (d) injecting petroleum into a natural underground reservoir;
  - (e) processing petroleum;
  - (f) handling or storing petroleum;
  - (g) the piped conveyance or offloading of petroleum.



- (4) Without limiting subsection (3), an ***offshore petroleum operation*** includes the following activities —
- (a) planning, designing, preparing or constructing an offshore petroleum site if the activity is carried out at or in the vicinity of the offshore petroleum site;
  - (b) commissioning, operating or maintaining an offshore petroleum site;
  - (c) decommissioning or abandoning an offshore petroleum site or removing any fixture, fitting, plant or structure from an offshore petroleum site;
  - (d) constructing, commissioning, operating or maintaining administrative or other support facilities at or in the vicinity of an offshore petroleum site;
  - (e) an activity relating to the care, security or maintenance of an offshore petroleum site carried out at or in the vicinity of the offshore petroleum site;
  - (f) constructing, commissioning, operating or maintaining accommodation premises at or in the vicinity of an offshore petroleum site;
  - (g) a prescribed activity carried out in the adjacent area.
- (5) However, an ***offshore petroleum operation*** does not include the following activities —
- (a) using an offtake tanker;
  - (b) using a tug or an anchor handler;
  - (c) providing supplies to a vessel or structure or otherwise travelling between a vessel or structure and the shore;

(d) a prescribed activity.

**337. Part IIA deleted**

Delete Part IIA.

**338. Section 97 amended**

In section 97(3A) delete “safe” and insert:

proper and workmanlike

**339. Section 119 amended**

(1) In section 119(1) delete “a *safety*” and insert:

an *exclusion*

(2) In section 119(2) delete “A safety” and insert:

An exclusion

(3) In section 119(3) delete “a safety” and insert:

an exclusion

Note: The heading to amended section 119 is to read:

**Exclusion zones**

**340. Section 137A amended**

Delete section 137A(2)(b) and (c) and insert:

- (b) the authority of any person to institute a proceeding for an offence against this Act.

**341. Part IIIA deleted**

Delete Part IIIA.

**342. Section 152 amended**

In section 152(2)(n) delete “safety”.

**343. Schedule 3 amended**

Delete Schedule 3 Division 2.

**344. Schedule 5 deleted**

Delete Schedule 5.

**Subdivision 5 — Various regulations repealed**

**345. Regulations under *Petroleum and Geothermal Energy Resources Act 1967* repealed**

- (1) The *Petroleum and Geothermal Energy Resources (Management of Safety) Regulations 2010* are repealed.
- (2) The *Petroleum and Geothermal Energy Resources (Occupational Safety and Health) Regulations 2010* are repealed.

**346. Regulations under *Petroleum and Geothermal Energy Safety Levies Act 2011* repealed**

The *Petroleum and Geothermal Energy Safety Levies Regulations 2011* are repealed.

**347. Regulations under *Petroleum Pipelines Act 1969* repealed**

- (1) The *Petroleum Pipelines (Management of Safety of Pipeline Operations) Regulations 2010* are repealed.
- (2) The *Petroleum Pipelines (Occupational Safety and Health) Regulations 2010* are repealed.

**348. Regulations under *Petroleum (Submerged Lands) Act 1982* repealed**

- (1) The *Petroleum (Submerged Lands) (Diving Safety) Regulations 2007* are repealed.
- (2) The *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 2007* are repealed.
- (3) The *Petroleum (Submerged Lands) (Occupational Safety and Health) Regulations 2007* are repealed.
- (4) The *Petroleum (Submerged Lands) (Pipelines) Regulations 2007* are repealed.

**Division 4 — Other consequential amendments**

**Subdivision 1 — *Building and Construction Industry Training Fund and Levy Collection Act 1990* amended**

**349. Act amended**

This Subdivision amends the *Building and Construction Industry Training Fund and Levy Collection Act 1990*.

**350. Section 8 amended**

In section 8(1)(c) delete “occupational safety and health” and insert:

work health and safety

**Subdivision 2 — *Constitution Acts Amendment Act 1899* amended**

**351. Act amended**

This Subdivision amends the *Constitution Acts Amendment Act 1899*.

**352. Schedule V amended**

In Schedule V Part 3 delete the items relating to the Board of Examiners, the Mines Occupational Safety and Health Advisory Board and the Mines Survey Board.

**Subdivision 3 — *Fair Trading Act 2010* amended**

**353. Act amended**

This Subdivision amends the *Fair Trading Act 2010*.

**354. Schedule 1 amended**

- (1) In Schedule 1 delete these items:

*Occupational Safety and Health Act 1984*

*Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*.

**Work Health and Safety Act 2020**

**Part 15** Repeals and consequential amendments

**Division 4** Other consequential amendments

**s. 355**

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- (2) In Schedule 1 insert in alphabetical order:

*Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*

*Work Health and Safety Act 2020*

**Subdivision 4 — *Health (Miscellaneous Provisions) Act 1911*  
amended**

**355. Act amended**

This Subdivision amends the *Health (Miscellaneous Provisions) Act 1911*.

**356. Section 246B amended**

In section 246B(2)(f) delete “department within the meaning of the *Occupational Safety and Health Act 1984*,” and insert:

WHS department within the meaning of the *Work Health and Safety Act 2020*,

**Subdivision 5 — *Industrial Relations Act 1979* amended**

**357. Act amended**

This Subdivision amends the *Industrial Relations Act 1979*.

**358. Section 7 amended**

Delete section 7(3) and insert:

- (3) Any matter within the Commission’s jurisdiction conferred by the *Work Health and Safety Act 2020* Schedule 1 clause 27(1) is not an industrial matter.

**359. Section 8 amended**

Delete section 8(3A) and insert:

- (3A) At least 1 commissioner must, in addition to the other attributes required for appointment, have —
- (a) knowledge of, or experience in, the field of work health and safety; and
  - (b) knowledge of the *Work Health and Safety Act 2020*,

sufficient for exercising the jurisdiction that the commissioner designated under section 16(2A) is required to exercise.

**360. Section 16 amended**

(1) Delete section 16(2A) and insert:

(2A) The Chief Commissioner must, in writing, designate 1 commissioner, who satisfies the additional requirements referred to in section 8(3A), to exercise the jurisdiction conferred by the *Work Health and Safety Act 2020* Schedule 1 clause 27(1).

(2AA) Without limiting subsection (2A), the Chief Commissioner may be designated under that subsection.

(2) In section 16(2C) delete “*Occupational Safety and Health Act 1984* section 51G” and insert:

*Work Health and Safety Act 2020* Schedule 1 clause 27(1)

**Work Health and Safety Act 2020**

**Part 15** Repeals and consequential amendments

**Division 4** Other consequential amendments

**s. 361**

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(3) Delete section 16(2D) and (2E).

**361. Section 49I amended**

In section 49I(1) delete “*Occupational Safety and Health Act 1984*, the *Mines Safety and Inspection Act 1994*” and insert:

*Work Health and Safety Act 2020*

**362. Section 113 amended**

Delete section 113(1)(d)(ii)(I) to (V) and insert:

(I) the *Work Health and Safety Act 2020*; and

(II) the *Owner-Drivers (Contracts and Disputes) Act 2007*;

**Subdivision 6 — *Local Government Act 1995* amended**

**363. Act amended**

This Subdivision amends the *Local Government Act 1995*.

**364. Section 5.40 amended**

In section 5.40(e) delete “*Occupational Safety and Health Act 1984*; and” and insert:

*Work Health and Safety Act 2020*; and



**Subdivision 7 — *Public Sector Management Act 1994* amended**

**365. Act amended**

This Subdivision amends the *Public Sector Management Act 1994*.

**366. Section 8 amended**

In section 8(1)(e) delete “*Occupational Safety and Health Act 1984*.” and insert:

*Work Health and Safety Act 2020*.

**367. Section 29 amended**

In section 29(1)(m) delete “*Occupational Safety and Health Act 1984*,” and insert:

*Work Health and Safety Act 2020*,

**Subdivision 8 — *Workers’ Compensation and Injury Management Act 1981* amended**

**368. Act amended**

This Subdivision amends the *Workers’ Compensation and Injury Management Act 1981*.

**369. Section 47 deleted**

Delete section 47.

**Work Health and Safety Act 2020**

**Part 15** Repeals and consequential amendments

**Division 4** Other consequential amendments

**s. 370**

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**370. Section 48 amended**

- (1) In section 48(2) delete “*Occupational Safety and Health Act 1984.*” and insert:

*Work Health and Safety Act 2020.*

- (2) In section 48(3) delete “*Occupational Safety and Health Act 1984*” and insert:

*Work Health and Safety Act 2020*

**371. Section 95 amended**

In section 95(1)(b) delete “*Occupational Safety and Health Act 1984; and*” and insert:

*Work Health and Safety Act 2020; and*

**372. Section 100B amended**

In section 100B(1):

- (a) delete “*Occupational Safety and Health Act 1984*” and insert:

*Work Health and Safety Act 2020*

- (b) delete “occupational safety and health” and insert:

work health and safety

## Part 16 — Transitional provisions

### Division 1 — Preliminary

**373. Terms used**

In this Part —

*commencement day* means the day fixed under section 2(1)(c);

*continue to apply* — see section 375;

*MSIA* means the *Mines Safety and Inspection Act 1994*;

*OSHA* means the *Occupational Safety and Health Act 1984*;

*PGERA* means the *Petroleum and Geothermal Energy Resources Act 1967*;

*PPA* means the *Petroleum Pipelines Act 1969*;

*P(SL)A* means the *Petroleum (Submerged Lands) Act 1982*;

*transitional regulations* means regulations made for the purposes of section 376(2).

**374. Application of *Interpretation Act 1984* not affected**

Except as provided in this Part or in transitional regulations, neither this Part nor transitional regulations affects the application of the *Interpretation Act 1984* in relation to the repeal or amendment of an enactment under Part 15.

**375. Continued application of enactments**

- (1) Where a provision of this Part provides for an enactment that is repealed or amended under Part 15 to continue to apply —
  - (a) the enactment continues to apply as if this Act had not been enacted; and

- (b) without limiting paragraph (a), the reference to the enactment includes any other enactment that is relevant to the application of the enactment.

Note for this subsection:

For the purposes of paragraph (b), the following are examples of other enactments that would be relevant to the application of the enactment referred to in paragraph (a) —

- (a) a power that can be used to investigate a contravention of, or otherwise to enforce, the enactment referred to in paragraph (a);
  - (b) an offence for contravening the enactment referred to in paragraph (a);
  - (c) regulations, or a power to make regulations, that relate to the enactment referred to in paragraph (a).
- (2) A provision of this Part that provides for an enactment to continue to apply does not limit any other provision of this Part that provides for an enactment to continue to apply.

**376. Transitional regulations**

- (1) In this section —

*specified* means specified or described in transitional regulations;

*transitional matter* —

- (a) means a matter or issue of a transitional nature that arises as a result of the enactment of this Act or the coming into operation of any provision of this Act or of the regulations; and
  - (b) includes a saving or application matter or issue.
- (2) The regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter.

- (3) Transitional regulations may provide that specified provisions of this Act or any other enactment —
- (a) do not apply to, or in relation to, a specified matter or thing; or
  - (b) apply with specified modifications to, or in relation to, a specified matter or thing.
- (4) Transitional regulations may provide that specified provisions of an enactment repealed or amended under Part 15 continue to apply (with or without specified modifications) to, or in relation to, a specified matter or thing as if this Act, or a specified provision of this Act, had not been enacted.
- (5) Transitional regulations may provide that a specified decision or other thing that —
- (a) is made, issued or done under an enactment repealed or amended under Part 15; and
  - (b) is in force or effect immediately before commencement day,
- continues in force or effect (with or without specified modifications) as if it had been made, issued or done under a specified provision of this Act or of the regulations.
- (6) Without limiting subsection (5), if transitional regulations under that subsection provide for a licence, permit, registration or other form of authority (however described) (the ***continuing authorisation***) to continue in force or effect as if it were an authorisation for the purposes of Part 4, section 45 applies in relation to any conditions of the continuing authorisation except to the extent that the transitional regulations otherwise provide.
- (7) Subsections (3) to (6) do not limit subsection (2).

**Division 2 — General saving in relation to certain matters**

**377. Enactments to continue to apply in relation to certain matters occurring before commencement day**

- (1) Each of the following enactments continues to apply to, and in relation to, the matters referred to in subsection (2), except to the extent that another provision of this Part, or transitional regulations, provide otherwise —
  - (a) MSIA;
  - (b) OSHA;
  - (c) PGERA;
  - (d) PPA;
  - (e) P(SL)A.
- (2) The matters are as follows —
  - (a) an offence committed against the enactment before commencement day;
  - (b) any other contravention of the enactment before commencement day;
  - (c) an accident or other incident, or a death, injury or illness, that occurs before commencement day and in relation to which the enactment requires a notification to be given, a record to be kept or other steps to be taken;
  - (d) any of the following notices issued before commencement day under the enactment —
    - (i) a provisional improvement notice;
    - (ii) an improvement notice;
    - (iii) a prohibition notice.

### **Division 3 — Office holders and bodies**

#### **378. WorkSafe Commissioner**

- (1) The person who, immediately before commencement day, is the WorkSafe Western Australia Commissioner under section 9 of OSHA is taken to have been appointed as the WorkSafe Commissioner under Schedule 1 clause 1 at the beginning of commencement day.
- (2) The person holds the office of WorkSafe Commissioner —
  - (a) with the conditions of service that applied to the person's appointment under OSHA; and
  - (b) subject to Schedule 1 clause 3, for a term equal to the balance of the term of the person's appointment under OSHA.
- (3) The person retains all existing and accruing rights as if the person's appointment as the WorkSafe Commissioner were a continuation of the person's appointment under OSHA.

#### **379. Chief Inspector of Mines**

- (1) The person who, immediately before commencement day, is the State mining engineer under section 16(1) of MSIA is taken to have been appointed as the Chief Inspector of Mines under Schedule 1 clause 5 at the beginning of commencement day.
- (2) The person holds the office of Chief Inspector of Mines —
  - (a) with the conditions of service that applied to the person's appointment under MSIA; and
  - (b) subject to Schedule 1 clause 7, for a term equal to the balance of the term of the person's appointment under MSIA.
- (3) The person retains all existing and accruing rights as if the person's appointment as the Chief Inspector of Mines were a continuation of the person's appointment under MSIA.

**380. Members of Work Health and Safety Commission**

- (1) The person who, immediately before commencement day, is the member of the Commission for Occupational Safety and Health appointed under section 6(2)(a) of OSHA is taken to have been appointed as the member of the Work Health and Safety Commission under Schedule 1 clause 10(2)(a) at the beginning of commencement day.
- (2) A person who, immediately before commencement day, is a member of the Commission for Occupational Safety and Health appointed under a subparagraph of section 6(2)(d) of OSHA is taken to have been appointed, at the beginning of commencement day, as a member of the Work Health and Safety Commission under the subparagraph of Schedule 1 clause 10(2)(d) that corresponds to the subparagraph of section 6(2)(d) of OSHA.
- (3) A person who is a member of the Work Health and Safety Commission under subsection (1) or (2) holds office —
  - (a) with the conditions of service that applied to the person's appointment under OSHA; and
  - (b) subject to Schedule 1 clause 12, for a term equal to the balance of the term of the person's appointment under OSHA.
- (4) The person retains all existing and accruing rights as if the person's appointment as a member of the Work Health and Safety Commission were a continuation of the person's appointment under OSHA.
- (5) The person who, immediately before commencement day, is the deputy chairperson of the Commission for Occupational Safety and Health under section 6A of OSHA is taken to have been appointed deputy chairperson of the Work Health and Safety Commission under Schedule 1 clause 11 at the beginning of commencement day.



**381. First annual report of Work Health and Safety Commission**

The first annual report of the Work Health and Safety Commission under Schedule 1 clause 20 must include a report of the following —

- (a) the operations of the Commission for Occupational Safety and Health during any period before commencement day that is not covered by a report submitted to the Minister under section 16 of OSHA before commencement day;
- (b) the operation of OSHA, and of any law that is a prescribed law for the purposes of section 16 of OSHA immediately before commencement day, during any period referred to in paragraph (a).

**382. Continuation of Mining Industry Advisory Committee**

- (1) The Mining Industry Advisory Committee established under section 14A of OSHA is to continue in place —
  - (a) until the Mining and Petroleum Advisory Committee is established under Schedule 1 clause 23; but
  - (b) for no longer than the period of 6 months beginning on commencement day.
- (2) For the purposes of subsection (1), section 14A of OSHA continues to apply but with the following modifications —
  - (a) references to the Commission are to the Work Health and Safety Commission;
  - (b) the chairperson of the committee is to be the person who is the chairperson immediately before commencement day or another member of the committee determined by the Minister of the Crown who is the Minister in respect of this Act;
  - (c) references to the Ministers or the Minister for Mines are to the Minister of the Crown who is the Minister in respect of this Act;

- (d) references to occupational safety and health are to work health and safety.

**383. Continuation of other advisory committees**

An advisory committee that, immediately before commencement day, is in place under section 15 of OSHA continues in place as if it had been appointed under Schedule 1 clause 19.

**Division 4 — Health and safety duties**

**Subdivision 1 — Designers**

**384. Section 22 applies only if designing starts on or after commencement day**

- (1) Section 22 applies only if the designing of the plant, substance or structure referred to in section 22(1)(a), (b) or (c) is started on or after commencement day.
- (2) Despite subsection (1), if the designing is started before commencement day, but is not completed before the 2<sup>nd</sup> anniversary of commencement day, section 22 —
  - (a) applies on and after that anniversary; and
  - (b) is taken always to have applied as if the designing had been started on or after commencement day.

**385. Continued application of repealed enactments relating to designers**

- (1) In this section —  
*repealed enactment* means any of the following enactments —
  - (a) section 14(1) of MSIA;
  - (b) section 14(3) of MSIA;
  - (c) section 23(1) of OSHA;
  - (d) section 23(3a) of OSHA.

- (2) A repealed enactment continues to apply to designers of plant, substances or structures in cases where the designing of the plant, substance or structure —
  - (a) is completed before commencement day; or
  - (b) is started, but not completed, before commencement day.
- (3) In a case falling within subsection (2)(b), the repealed enactment ceases to apply if —
  - (a) the designing is not completed before the 2<sup>nd</sup> anniversary of commencement day; and
  - (b) section 22 applies in accordance with section 384(2) in relation to the plant, substance or structure.

### **Subdivision 2 — Manufacturers**

#### **386. Plant, substance or structure manufactured in batch**

- (1) This section applies for the purposes of this Subdivision if any plant, substance or structure is manufactured in a batch.
- (2) The manufacturing of the plant, substance or structure is taken to start when the manufacturing of the batch starts.
- (3) The manufacturing of the plant, substance or structure is taken to be completed when the manufacturing of the batch is completed.

#### **387. Section 23 applies only if manufacturing starts on or after commencement day**

- (1) Section 23 applies only if the manufacturing of the plant, substance or structure referred to in section 23(1)(a), (b) or (c) starts on or after commencement day.

- (2) Despite subsection (1), if the manufacturing is started before commencement day, but is not completed before the 1<sup>st</sup> anniversary of commencement day, section 23 —
- (a) applies on and after that anniversary; and
  - (b) is taken always to have applied as if the manufacturing had been started on or after commencement day.

**388. Continued application of repealed enactments relating to manufacturers**

- (1) In this section —
- repealed enactment*** means any of the following enactments —
- (a) section 14(1) of MSIA;
  - (b) section 14(4) of MSIA;
  - (c) section 23(1) of OSHA;
  - (d) section 23(3) of OSHA;
  - (e) Schedule 1 clause 10(1) of PGERA;
  - (f) Schedule 1 clause 10(2) of PGERA;
  - (g) Schedule 1 clause 10(1) of PPA;
  - (h) Schedule 1 clause 10(2) of PPA;
  - (i) Schedule 5 clause 11(1) of P(SL)A;
  - (j) Schedule 5 clause 11(2) of P(SL)A.
- (2) A repealed enactment continues to apply to manufacturers of plant, substances or structures in cases where the manufacturing of the plant, substance or structure —
- (a) is completed before commencement day; or
  - (b) is started, but not completed, before commencement day.

- (3) In a case falling within subsection (2)(b), the repealed enactment ceases to apply if —
- (a) the manufacturing is not completed before the 1<sup>st</sup> anniversary of commencement day; and
  - (b) section 23 applies in accordance with section 387(2) in relation to the plant, substance or structure.

### **Subdivision 3 — Importers**

**389. Section 24 not to apply if importation process starts before commencement day**

- (1) Section 24 applies only if the plant, substance or structure referred to in section 24(1)(a), (b) or (c) —
- (a) is imported on or after commencement day; and
  - (b) immediately before commencement day, is not in transit for the importation.
- (2) Despite subsection (1), if the plant, substance or structure is, immediately before commencement day, in transit for the importation, but is not imported before the 1<sup>st</sup> anniversary of commencement day, section 24 —
- (a) applies on and after that anniversary; and
  - (b) is taken always to have applied as if the plant, substance or structure had not been in transit for the importation immediately before commencement day.

**390. Continued application of repealed enactments relating to importers**

- (1) In this section —
- non-petroleum repealed enactment* means any of the following enactments —
- (a) section 14(1) of MSIA;
  - (b) section 14(4) of MSIA;
  - (c) section 23(1) of OSHA;

(d) section 23(3) of OSHA;

***petroleum repealed enactment*** means any of the following enactments —

(a) Schedule 1 clause 10(3) of PGERA;

(b) Schedule 1 clause 10(3) of PPA;

(c) Schedule 5 clause 11(3) of P(SL)A.

(2) A non-petroleum repealed enactment continues to apply to importers of plant, substances or structures in cases where the plant, substance or structure —

(a) is imported before commencement day; or

(b) immediately before commencement day, is in transit for the importation.

(3) In a case falling within subsection (2)(b), the non-petroleum repealed enactment ceases to apply if —

(a) the plant, substance or structure is not imported before the 1<sup>st</sup> anniversary of commencement day; and

(b) section 24 applies in accordance with section 389(2) in relation to the plant, substance or structure.

(4) A petroleum repealed enactment continues to apply to persons who import plant, substances or structures into Australia in cases where the plant, substance or structure —

(a) is imported into Australia before commencement day; or

(b) immediately before commencement day, is in transit to Australia for the importation into Australia.

(5) The definition of ***import*** in section 4 does not apply for the purposes of subsection (4).

### **Subdivision 4 — Suppliers**

**391. Start of supply**

For the purposes of this Subdivision, a supply is *started* when the supplier first carries out any process associated with the supply.

**392. Section 25 not to apply if supply started before commencement day**

- (1) Section 25 does not apply if the supply of the plant, substance or structure referred to in section 25(1)(a), (b) or (c) is started before commencement day.
- (2) Despite subsection (1), if the plant, substance or structure is not supplied before the 1<sup>st</sup> anniversary of commencement day, section 25 —
  - (a) applies on and after that anniversary; and
  - (b) is taken always to have applied as if the supply of the plant, substance or structure had been started on or after commencement day.

**393. Continued application of repealed enactments relating to suppliers**

- (1) In this section —

*repealed enactment* means any of the following enactments —

  - (a) section 14(1) of MSIA;
  - (b) section 14(4) of MSIA;
  - (c) section 23(1) of OSHA;
  - (d) section 23(3) of OSHA;
  - (e) Schedule 1 clause 11 of PGERA;
  - (f) Schedule 1 clause 11 of PPA;
  - (g) Schedule 5 clause 12 of P(SL)A;

*supplier*, where relevant, has the meaning given in —

- (a) Schedule 1 clause 11(2) of PGERA; or
- (b) Schedule 1 clause 11(2) of PPA; or
- (c) Schedule 5 clause 12(2) of P(SL)A;

*supply*, where relevant, has the meaning given in —

- (a) section 4(1) of MSIA; or
- (b) section 3(1) of OSHA.

- (2) A repealed enactment continues to apply to suppliers of plant, substances or structures in cases where the supply of the plant, substance or structure is started before commencement day (whether or not the supply occurs before commencement day).
- (3) The repealed enactment ceases to apply if —
  - (a) the plant, substance or structure is not supplied before the 1<sup>st</sup> anniversary of commencement day; and
  - (b) section 25 applies in accordance with section 392(2) in relation to the plant, substance or structure.

**Subdivision 5 — Persons who install, construct or commission plant or structures**

**394. Section 26 not to apply if installing, constructing or commissioning occurs before commencement day**

- (1) Section 26 applies to the installing or constructing of any plant or structure referred to in section 26(1) only if the installing or constructing is started on or after commencement day.
- (2) Despite subsection (1), if the installing or constructing is started before commencement day, but is not completed before the 2<sup>nd</sup> anniversary of commencement day, section 26 —
  - (a) applies on and after that anniversary; and
  - (b) is taken always to have applied as if the installing or constructing had been started on or after commencement day.



- (3) Section 26 applies to the commissioning of any plant or structure referred to in section 26(1) only if the commissioning is started on or after commencement day.
- (4) Despite subsection (3), if the commissioning is started before commencement day, but is not completed before the 1<sup>st</sup> anniversary of commencement day, section 26 —
  - (a) applies on and after that anniversary; and
  - (b) is taken always to have applied as if the commissioning had been started on or after commencement day.

**395. Continued application of repealed enactments relating to persons who install or construct plant or structures**

- (1) In this section —  
*repealed enactment* means any of the following enactments —
  - (a) section 14(2) of MSIA;
  - (b) section 14(3) of MSIA;
  - (c) section 23(2) of OSHA;
  - (d) section 23(3a) of OSHA;
  - (e) Schedule 1 clause 12 of PGERA;
  - (f) Schedule 1 clause 12 of PPA;
  - (g) Schedule 5 clause 13 of P(SL)A.
- (2) A repealed enactment continues to apply to persons who install or construct plant or structures in cases where the installing or constructing of the plant or structure —
  - (a) is completed before commencement day; or
  - (b) is started, but not completed, before commencement day.
- (3) In a case falling within subsection (2)(b), the repealed enactment ceases to apply if —
  - (a) the installing or constructing is not completed before the 2<sup>nd</sup> anniversary of commencement day; and

- (b) section 26 applies in accordance with section 394(2) in relation to the plant or structure.

## **Division 5 — Health and safety representatives**

### **Subdivision 1 — Preliminary**

#### **396. Terms used**

In this Division —

***repealed enactment*** means any of the following enactments —

- (a) Part 5 Division 1 of MSIA;
- (b) Part IV Division 1 of OSHA;
- (c) Schedule 1 Division 3 Subdivision 3 of PGERA;
- (d) Schedule 1 Division 3 Subdivision 3 of PPA;
- (e) Schedule 5 Division 3 Subdivision 3 of P(SL)A.

### **Subdivision 2 — Main provisions**

#### **397. Safety and health representatives elected before commencement day**

- (1) This section applies to a person who, immediately before commencement day, is a safety and health representative under a repealed enactment in relation to —
  - (a) workers at a workplace; or
  - (b) any other type of group of workers.
- (2) This section also applies to a person who, immediately before commencement day, is a safety and health representative elect under a repealed enactment in relation to —
  - (a) workers at a workplace; or
  - (b) any other type of group of workers.

- (3) The person is taken to have been elected as a health and safety representative under Part 5 Division 3 Subdivision 4 for a work group that corresponds to the group of workers referred to in subsection (1)(a) or (b) or (2)(a) or (b) (as the case requires).
- (4) The person takes office as a health and safety representative —
  - (a) in a case falling within subsection (1), at the beginning of commencement day; or
  - (b) in a case falling within subsection (2), when the person would have taken office as a safety and health representative under the repealed enactment.
- (5) Subject to section 64(2), the person holds office until 1 of the following occurs —
  - (a) in a case falling within subsection (1), the balance of what was the person's term as a safety and health representative under the repealed enactment expires;
  - (b) the period of 1 year starting on commencement day expires;
  - (c) a member of the work group referred to in subsection (3) makes a request under section 50 and, in consequence of that request, a person takes office as a health and safety representative under Part 5 Division 3 Subdivision 4.
- (6) This section applies to a deputy safety and health representative, or a deputy safety and health representative elect, under a repealed enactment as it applies to a safety and health representative, or a safety and health representative elect, under the repealed enactment.
- (7) Where this section applies to a deputy safety and health representative or a deputy safety and health representative elect, references to a health and safety representative under Part 5 Division 3 Subdivision 4 are to a deputy health and safety

representative under that Subdivision (except in subsection (5)(c)).

**398. Elections in process before commencement day**

- (1) This section applies if, immediately before commencement day, an election is in process under a repealed enactment for a safety and health representative in relation to —
  - (a) workers at a workplace; or
  - (b) any other type of group of workers.
- (2) The election must be continued and completed, and the repealed enactment continues to apply for that purpose.
- (3) The election must be completed within the period of 3 months starting on commencement day.
- (4) A person who is elected as a safety and health representative in the election is taken to have been elected as a health and safety representative under Part 5 Division 3 Subdivision 4 for a work group that corresponds to the group of workers referred to in subsection (1)(a) or (b).
- (5) The person takes office when the person would have taken office under the repealed enactment.
- (6) Subject to section 64(2), the person holds office until 1 of the following occurs —
  - (a) the period of 1 year starting on commencement day expires;
  - (b) a member of the work group referred to in subsection (4) makes a request under section 50 and, in consequence of that request, a person takes office as a health and safety representative under Part 5 Division 3 Subdivision 4.
- (7) This section applies to an election for a deputy safety and health representative under a repealed enactment as it applies to an election for a safety and health representative under the repealed enactment, and, where this section applies to an election for a

deputy safety and health representative, references to a health and safety representative under Part 5 Division 3 Subdivision 4 are to a deputy health and safety representative under that Subdivision (except in subsection (6)(b)).

**399. Disqualifications**

- (1) This section applies if, immediately before commencement day, a disqualification is in effect under a repealed enactment preventing a person from being a safety and health representative or a deputy safety and health representative.
- (2) The disqualification continues in effect as if it were a disqualification under section 65 preventing the person from being a health and safety representative or a deputy health and safety representative.

**400. Functions and powers under repealed enactments**

A person who is a health and safety representative, or a deputy health and safety representative, for a work group (including by virtue of this Division) —

- (a) is taken to be a safety and health representative, or a deputy safety and health representative, for the work group under any repealed enactment that is relevant to the work group as the repealed enactment continues to apply under this Part or otherwise; and
- (b) may accordingly exercise or perform any powers or functions of a safety and health representative, or deputy, under the repealed enactment as the repealed enactment continues to apply under this Part or otherwise.

## **Division 6 — Health and safety committees**

### **Subdivision 1 — Preliminary**

#### **401. Term used**

In this Division —

***repealed enactment*** means any of the following enactments —

- (a) Part 5 Division 2 of MSIA;
- (b) Part IV Division 2 of OSHA;
- (c) Schedule 1 Division 3 Subdivision 4 of PGERA;
- (d) Schedule 1 Division 3 Subdivision 4 of PPA;
- (e) Schedule 5 Division 3 Subdivision 4 of P(SL)A.

### **Subdivision 2 — Main provisions**

#### **402. Safety and health committees in place before commencement day**

- (1) This section applies to a safety and health committee that, immediately before commencement day, is in place under a repealed enactment in relation to —
  - (a) workers at a workplace; or
  - (b) any other type of group of workers.
- (2) The safety and health committee is taken to be a health and safety committee under Part 5 Division 4 in relation to the group of workers referred to in subsection (1)(a) or (b).
- (3) The committee continues until 1 of the following occurs —
  - (a) the period of 1 year starting on commencement day expires;
  - (b) the committee is replaced, wholly or partly, by a new committee established under Part 5 Division 4.

**403. Process to establish safety and health committee started before commencement day**

- (1) This section applies if, immediately before commencement day, a process is being undertaken under a repealed enactment to establish a safety and health committee in relation to —
  - (a) workers at a workplace; or
  - (b) any other type of group of workers.
- (2) The process must be continued and completed, and the repealed enactment continues to apply for that purpose.
- (3) The process must be completed within the period of 3 months starting on commencement day.
- (4) A safety and health committee established as a result of the process is taken to be a health and safety committee under Part 5 Division 4 in relation to the group of workers referred to in subsection (1)(a) or (b).
- (5) The committee continues until 1 of the following occurs —
  - (a) the period of 1 year starting on commencement day expires;
  - (b) the committee is replaced, wholly or partly, by a new committee established under Part 5 Division 4.

**Division 7 — Issue resolution**

**404. Part 5 Division 5 to apply to unresolved issues arising before commencement day**

Part 5 Division 5 applies to an issue that arises, but is not resolved or discontinued, before commencement day, unless an enactment referred to in section 405(2)(a) or (b) continues to apply to the issue.

**405. Continued application of enactments relating to issue resolution**

- (1) In this section —  
*relevant procedure* has the meaning given in section 70 of MSIA or section 24 of OSHA (as the case requires).
- (2) The following enactments continue to apply to an issue if, before commencement day, the relevant procedure is invoked in relation to the issue —
  - (a) sections 70 and 71 of MSIA;
  - (b) sections 24 and 25 of OSHA.

**Division 8 — The regulator**

**406. Continuing powers and functions under OSHA**

- (1) In this section —  
*Commissioner* has the meaning given in section 3(1) of OSHA.
- (2) Subsection (3) applies for the purposes of OSHA as it continues to apply under this Part or otherwise.
- (3) The powers and functions of the Commissioner are to be exercised and performed by the regulator.
- (4) Action taken, or documents or information obtained, by the regulator under this Act may be relied upon, or otherwise used, for the purposes of OSHA as it continues to apply under this Part or otherwise.

**407. Continuing powers and functions under MSIA**

- (1) In this section —  
*State coal mining engineer* and *State mining engineer* have the meanings given in section 4(1) of MSIA.
- (2) Subsection (3) applies for the purposes of MSIA as it continues to apply under this Part or otherwise.



- (3) The powers and functions of the State coal mining engineer and the State mining engineer are to be exercised and performed by the regulator.
- (4) Action taken, or documents or information obtained, by the regulator under this Act may be relied upon, or otherwise used, for the purposes of MSIA as it continues to apply under this Part or otherwise.

**408. Continuing powers and functions under petroleum and geothermal energy legislation**

- (1) In this section —  
*repealed enactment* means —
  - (a) a listed OSH law as defined in section 5(1) of PGERA;  
or
  - (b) a listed OSH law as defined in section 4(1) of PPA; or
  - (c) a listed OSH law as defined in section 4(1) of P(SL)A.
- (2) Subsection (3) applies for the purposes of a repealed enactment as it continues to apply under this Part or otherwise.
- (3) The powers and functions of the Minister in relation to the repealed enactment are to be exercised and performed by the regulator.
- (4) Action taken, or documents or information obtained, by the regulator under this Act may be relied upon, or otherwise used, for the purposes of a repealed enactment as it continues to apply under this Part or otherwise.

**409. Delegation**

Without limiting section 154, that section applies to the powers and functions to be exercised and performed by the regulator by virtue of this Division.

### **Division 9 — Inspectors**

#### **410. Inspectors under OSHA**

- (1) Subsection (2) applies to a person who, immediately before commencement day, is —
  - (a) an inspector appointed under section 42 of OSHA; or
  - (b) a restricted inspector appointed under section 42A of OSHA.
- (2) The person is taken to have been appointed as an inspector under section 156 at the beginning of commencement day.
- (3) A person who is an inspector under this Act (including by virtue of this Division) —
  - (a) is taken to be an inspector under OSHA as OSHA continues to apply under this Part or otherwise; and
  - (b) may accordingly exercise or perform any powers or functions of an inspector under OSHA as OSHA continues to apply under this Part or otherwise.
- (4) An inspector under this Act may exercise a compliance power for the purposes of any matter or thing to which, or in relation to which, OSHA continues to apply under this Part or otherwise as if this Act applied to, or in relation to, the matter or thing.
- (5) For the purposes of subsection (4), but without limiting that subsection, in this Act, where relevant, references to offences against, or contraventions of, this Act include references to offences against, or contraventions of, OSHA.
- (6) Action taken, or documents or information obtained, by an inspector under this Act may be relied upon, or otherwise used, for the purposes of OSHA as it continues to apply under this Part or otherwise.

**411. Inspectors under MSIA**

- (1) Subsection (2) applies to a person who, immediately before commencement day, is a district inspector or a special inspector appointed under section 17 of MSIA.
- (2) The person is taken to have been appointed as an inspector under section 156 at the beginning of commencement day.
- (3) A person who is an inspector under this Act (including by virtue of this Division) —
  - (a) is taken to be a district inspector under MSIA as MSIA continues to apply under this Part or otherwise; and
  - (b) may accordingly exercise or perform any powers or functions of a district inspector under MSIA as MSIA continues to apply under this Part or otherwise.
- (4) An inspector under this Act may exercise a compliance power for the purposes of any matter or thing to which, or in relation to which, MSIA continues to apply under this Part or otherwise as if this Act applied to, or in relation to, the matter or thing.
- (5) For the purposes of subsection (4), but without limiting that subsection, in this Act, where relevant, references to offences against, or contraventions of, this Act include references to offences against, or contraventions of, MSIA.
- (6) Action taken, or documents or information obtained, by an inspector under this Act may be relied upon, or otherwise used, for the purposes of MSIA as it continues to apply under this Part or otherwise.

**412. Inspectors under PGERA**

- (1) In this section —  
*listed OSH law* means a listed OSH law as defined in section 5(1) of PGERA.

- (2) Subsection (3) applies to a person who, immediately before commencement day, is an inspector appointed under section 118 of PGERA.
- (3) The person is taken to have been appointed as an inspector under section 156 at the beginning of commencement day.
- (4) Subsection (3) does not affect the continuation of the person's appointment as an inspector under PGERA on and after commencement day.
- (5) A person who is an inspector under this Act (including by virtue of this Division) —
  - (a) is taken to be an inspector under PGERA for the purposes of each listed OSH law as the listed OSH law continues to apply under this Part or otherwise; and
  - (b) may accordingly exercise or perform any powers or functions of an inspector under PGERA for the purposes of any listed OSH law as the listed OSH law continues to apply under this Part or otherwise.
- (6) An inspector under this Act may exercise a compliance power for the purposes of any matter or thing to which, or in relation to which, any listed OSH law continues to apply under this Part or otherwise as if this Act applied to, or in relation to, the matter or thing.
- (7) For the purposes of subsection (6), but without limiting that subsection, in this Act, where relevant, references to offences against, or contraventions of, this Act include references to offences against, or contraventions of, the listed OSH law.
- (8) Action taken, or documents or information obtained, by an inspector under this Act may be relied upon, or otherwise used, for the purposes of any listed OSH law as it continues to apply under this Part or otherwise.

**413. Inspectors under PPA**

- (1) In this section —  
*listed OSH law* means a listed OSH law as defined in section 4(1) of PPA.
- (2) Subsection (3) applies to a person who, immediately before commencement day, is an inspector appointed under section 62 of PPA.
- (3) The person is taken to have been appointed as an inspector under section 156 at the beginning of commencement day.
- (4) Subsection (3) does not affect the continuation of the person's appointment as an inspector under PPA on and after commencement day.
- (5) A person who is an inspector under this Act (including by virtue of this Division) —
  - (a) is taken to be an inspector under PPA for the purposes of each listed OSH law as the listed OSH law continues to apply under this Part or otherwise; and
  - (b) may accordingly exercise or perform any powers or functions of an inspector under PPA for the purposes of any listed OSH law as the listed OSH law continues to apply under this Part or otherwise.
- (6) An inspector under this Act may exercise a compliance power for the purposes of any matter or thing to which, or in relation to which, any listed OSH law continues to apply under this Part or otherwise as if this Act applied to, or in relation to, the matter or thing.
- (7) For the purposes of subsection (6), but without limiting that subsection, in this Act, where relevant, references to offences against, or contraventions of, this Act include references to offences against, or contraventions of, the listed OSH law.

- (8) Action taken, or documents or information obtained, by an inspector under this Act may be relied upon, or otherwise used, for the purposes of any listed OSH law as it continues to apply under this Part or otherwise.

**414. Inspectors under P(SL)A**

- (1) In this section —  
*listed OSH law* means a listed OSH law as defined in section 4(1) of P(SL)A.
- (2) Subsection (3) applies to a person who, immediately before commencement day, is an inspector appointed under section 125 of P(SL)A.
- (3) The person is taken to have been appointed as an inspector under section 156 at the beginning of commencement day.
- (4) Subsection (3) does not affect the continuation of the person's appointment as an inspector under P(SL)A on and after commencement day.
- (5) A person who is an inspector under this Act (including by virtue of this Division) —
- (a) is taken to be an inspector under P(SL)A for the purposes of each listed OSH law as the listed OSH law continues to apply under this Part or otherwise; and
  - (b) may accordingly exercise or perform any powers or functions of an inspector under P(SL)A for the purposes of any listed OSH law as the listed OSH law continues to apply under this Part or otherwise.
- (6) An inspector under this Act may exercise a compliance power for the purposes of any matter or thing to which, or in relation to which, any listed OSH law continues to apply under this Part or otherwise as if this Act applied to, or in relation to, the matter or thing.

- (7) For the purposes of subsection (6), but without limiting that subsection, in this Act, where relevant, references to offences against, or contraventions of, this Act include references to offences against, or contraventions of, the listed OSH law.
- (8) Action taken, or documents or information obtained, by an inspector under this Act may be relied upon, or otherwise used, for the purposes of any listed OSH law as it continues to apply under this Part or otherwise.

**415. Application of sections 161 and 162**

Without limiting sections 161 and 162, those sections apply in relation to an inspector's powers and functions by virtue of sections 410(3), 411(3), 412(5), 413(5) and 414(5).

**Division 10 — Legal proceedings**

**416. Jurisdiction of Occupational Safety and Health Tribunal to be exercised by Tribunal**

- (1) In this section —  
*OSH Tribunal* means the Occupational Safety and Health Tribunal established under section 51G of OSHA.
- (2) Subsection (3) applies to any proceedings that —
  - (a) before commencement day, are brought before the OSH Tribunal under OSHA or any other enactment; but
  - (b) are not completed or discontinued before commencement day.
- (3) The hearing and determination of the proceedings are to be completed by the Tribunal.
- (4) Subsection (5) applies to the following —
  - (a) any right to bring proceedings before the OSH Tribunal that arises under OSHA or any other enactment before

commencement day if the proceedings are not brought before commencement day;

- (b) any right to bring proceedings before the OSH Tribunal that arises on or after commencement day under OSHA or any other enactment as OSHA or the other enactment continues to apply under this Part or otherwise.
- (5) The proceedings are to be brought before, and heard and determined by, the Tribunal.

**417. Jurisdiction of safety and health magistrates to be exercised by health and safety magistrates**

- (1) In this section —

*safety and health magistrate* means a safety and health magistrate under section 51B of OSHA;

*safety and health offence* means an offence within the jurisdiction of a safety and health magistrate that —

- (a) is committed before commencement day against OSHA or any other enactment; or
  - (b) is committed on or after commencement day against OSHA or any other enactment as OSHA or the other enactment continues to apply under this Part or otherwise.
- (2) Subsections (3) and (4) apply to any proceedings for a safety and health offence that are brought, but not completed or discontinued, before commencement day.
- (3) The proceedings are to be continued by a person referred to in section 230(1).
- (4) The hearing and determination of the proceedings are to be completed by a magistrate.



- (5) Any proceedings for a safety and health offence that are brought on or after commencement day are to be —
- (a) brought by a person referred to in section 230(1); and
  - (b) heard and determined by a magistrate.

### **Division 11 — Other matters**

#### **418. Notifiable incidents**

Sections 38 and 39 do not apply to a notifiable incident that occurs before commencement day.

#### **419. Independent studies at mines**

- (1) Section 45 of MSIA continues to apply in relation to any notice given under section 45(1) of MSIA before commencement day, unless the regulator cancels the notice.
- (2) For the purposes of subsection (1), in section 45(3) of MSIA the reference to the State mining engineer is to the regulator in a case where the State mining engineer did not approve an engineer or other professional person before commencement day.

#### **420. Codes of practice**

A code of practice that, immediately before commencement day, is in effect under section 93 of MSIA or section 57 of OSHA continues in effect as if it had been approved under section 274, and the code of practice may be varied or revoked under that section accordingly.

#### **421. Protections from personal liability**

Section 103 of MSIA and section 59 of OSHA continue to apply in relation to any matter or thing done, or omitted to be done, before commencement day.

## **Division 12 — Levies**

### **Subdivision 1 — Mines safety and inspection levy**

#### **422. Administration costs**

In sections 105A(1) and 105AB(3) of MSIA, as amended under Part 15 Division 2 Subdivision 1, references to MSIA include the following —

- (a) MSIA as it operated before commencement day;
- (b) the provisions of MSIA repealed by Part 15 Division 2 Subdivision 1 as those provisions continue to apply on and after commencement day under this Part or otherwise;
- (c) the *Mines Safety and Inspection Regulations 1995* as those regulations continue to apply on and after commencement day under this Part or otherwise.

#### **423. *Mines Safety and Inspection Levy Regulations 2010***

- (1) In this section —

***levy regulations*** means the *Mines Safety and Inspection Levy Regulations 2010*;

***quarter*** means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April.

- (2) Subject to subsections (3) and (4), the levy regulations continue in force as if made under MSIA as amended by Part 15 Division 2 Subdivision 1, and the levy regulations may be amended or repealed under MSIA, as so amended, accordingly.
- (3) The levy regulations, as they apply immediately before commencement day, continue to apply in relation to quarters ending before commencement day as if this Act had not been enacted.

- (4) If a quarter commences, but does not end, before commencement day, for the purposes of subsection (3), the quarter is taken to end on the day before commencement day.

**Subdivision 2 — Petroleum and geothermal energy safety levies**

**424. Administration costs**

In section 21(3)(a) of the *Petroleum and Geothermal Energy Safety Levies Act 2011*, the reference to that Act includes the enactments referred to in section 21(3)(b) to (d) of that Act immediately before commencement day as those enactments —

- (a) operated before commencement day; and
- (b) continue to apply on and after commencement day under this Part or otherwise.

**425. *Petroleum and Geothermal Energy Safety Levies Act 2011* to continue to apply to past levy periods**

- (1) In this section —
- levy period* means a period that, immediately before commencement day, is prescribed under the *Petroleum and Geothermal Energy Safety Levies Act 2011* as a levy period.
- (2) The *Petroleum and Geothermal Energy Safety Levies Act 2011* continues to apply in relation to levy periods ending before commencement day.
- (3) If a levy period commences, but does not end, before commencement day, for the purposes of subsection (2), the levy period is taken to end on the day before commencement day.

## **Schedule 1 — Various offices and bodies**

[s. 12A]

### **Division 1 — WorkSafe Commissioner**

#### **1. Appointment of WorkSafe Commissioner**

- (1) The Governor may appoint a person to be the WorkSafe Commissioner.
- (2) The term of the person's appointment is the term, not exceeding 5 years, specified in the instrument of appointment, and the person may be reappointed.
- (3) Subject to the *Salaries and Allowances Act 1975*, the WorkSafe Commissioner is entitled to the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.
- (4) If the person appointed as the WorkSafe Commissioner is, immediately before the appointment, a public service officer, the person retains all existing and accruing rights despite the appointment.
- (5) If the person appointed as the WorkSafe Commissioner is, immediately before the appointment, a public service officer, the person is entitled, upon ceasing to be the WorkSafe Commissioner, to be appointed to an office in the Public Service not lower in status than the office the person occupied immediately before appointment as the WorkSafe Commissioner.
- (6) The WorkSafe Commissioner must not engage in paid employment outside the WorkSafe Commissioner's functions under this Act or any other written law without the Minister's approval.

#### **2. Functions of WorkSafe Commissioner and relationship with Minister and WHS department**

- (1) The WorkSafe Commissioner is the regulator under this Act.
- (2) The WorkSafe Commissioner is responsible to the Minister for the administration of this Act and any other law relating to work health and safety administered by the Minister.

- (3) The WorkSafe Commissioner (including as the regulator) is subject to the Minister's direction and control.
- (4) Persons may be appointed or made available under the *Public Sector Management Act 1994* Part 3 to assist the WorkSafe Commissioner in the performance of the WorkSafe Commissioner's functions.
- (5) The WorkSafe Commissioner may also appoint other persons to assist the WorkSafe Commissioner in the performance of the WorkSafe Commissioner's functions.
- (6) The offices of WorkSafe Commissioner and chief executive officer of the WHS department may be held by the same person.

**3. Vacation of office of WorkSafe Commissioner**

The office of WorkSafe Commissioner becomes vacant if —

- (a) the term of the person holding the office expires; or
- (b) that person —
  - (i) dies; or
  - (ii) becomes permanently incapable of performing the functions of the office; or
  - (iii) resigns from office by written notice to the Minister; or
  - (iv) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (v) is removed from office by the Governor on the grounds of neglect of duty, incompetence or the person's behaviour; or
  - (vi) is absent without the Minister's leave from 3 consecutive meetings of the Work Health and Safety Commission (of which the WorkSafe Commissioner is a member under clause 10(2)(b)).

**4. Acting WorkSafe Commissioner**

- (1) The Minister may appoint a person to act as the WorkSafe Commissioner on a temporary basis if —
  - (a) the office is vacant; or
  - (b) the person holding the office is unable to perform its functions because of sickness, absence or other cause.
- (2) An appointment may be terminated at any time by the Minister.
- (3) The period of an appointment must not exceed 3 months.
- (4) While acting in accordance with the terms of their appointment, a person acting as the WorkSafe Commissioner has all of the functions and entitlements of that office.
- (5) No act or omission of a person acting as the WorkSafe Commissioner can be questioned on the ground that the occasion for their appointment or so acting had not arisen or had ceased.

**Division 2 — Chief Inspector of Mines and Chief Inspector  
Petroleum Safety**

**5. Appointment of Chief Inspector of Mines and Chief Inspector  
Petroleum Safety**

- (1) The Minister may make 1 or both of the following appointments —
  - (a) a person to be the Chief Inspector of Mines;
  - (b) a person to be the Chief Inspector Petroleum Safety.
- (2) The term of the person's appointment is the term, not exceeding 5 years, specified in the instrument of appointment, and the person may be reappointed.
- (3) Notice of the appointment must be given in the *Gazette*.
- (4) Unless the person holding the office is a public service officer, the Chief Inspector of Mines or the Chief Inspector Petroleum Safety is entitled to the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.

- (5) Neither the Chief Inspector of Mines nor the Chief Inspector Petroleum Safety may engage in paid employment outside their functions under this Act or any other written law without the Minister's approval.

**6. Functions of Chief Inspector of Mines and Chief Inspector Petroleum Safety**

- (1) The regulations may give functions to the Chief Inspector of Mines in relation to work health and safety in, or relating to, the mining industry in the State.
- (2) The regulations may give functions to the Chief Inspector Petroleum Safety in relation to work health and safety in, or relating to, activities that are regulated by the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*.
- (3) The Chief Inspector Petroleum Safety also has the functions given to that office under the *Petroleum and Geothermal Energy Safety Levies Act 2011*.
- (4) Without limiting section 154, the WorkSafe Commissioner, as the regulator, may delegate under that section powers and functions to the Chief Inspector of Mines or the Chief Inspector Petroleum Safety.
- (5) The Chief Inspector of Mines and the Chief Inspector Petroleum Safety are subject to the direction and control of the Minister.

**7. Vacation of office of Chief Inspector of Mines or Chief Inspector Petroleum Safety**

The office of Chief Inspector of Mines or Chief Inspector Petroleum Safety becomes vacant if —

- (a) the term of the person holding the office expires; or
- (b) that person —
- (i) dies; or
  - (ii) becomes permanently incapable of performing the functions of the office; or
  - (iii) resigns from office by written notice to the Minister; or

- (iv) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (v) is removed from office by the Minister on the grounds of neglect of duty, incompetence or the person's behaviour.

**8. Acting Chief Inspector of Mines or Acting Chief Inspector Petroleum Safety**

- (1) The Minister may appoint a person to act as the Chief Inspector of Mines or the Chief Inspector Petroleum Safety on a temporary basis if —
  - (a) the office is vacant; or
  - (b) the person holding the office is unable to perform its functions because of sickness, absence or other cause.
- (2) An appointment may be terminated at any time by the Minister.
- (3) The period of an appointment must not exceed 3 months.
- (4) While acting in accordance with the terms of their appointment, a person acting as the Chief Inspector of Mines or the Chief Inspector Petroleum Safety has all of the functions and entitlements of the office in which the person is acting.
- (5) No act or omission of a person acting as the Chief Inspector of Mines or the Chief Inspector Petroleum Safety can be questioned on the ground that the occasion for their appointment or so acting had not arisen or had ceased.

**Division 3 — Work Health and Safety Commission**

**Subdivision 1 — Preliminary**

**9. Terms used**

In this Division —

***appointed member*** means a member of the Commission appointed under clause 10(2)(a) or (d);

***Commission*** means the Work Health and Safety Commission.



**Subdivision 2 — Main provisions**

**10. Establishment of Work Health and Safety Commission**

- (1) There is to be a commission called the Work Health and Safety Commission.
- (2) The members of the Commission are to be as follows —
  - (a) a person nominated by the Minister and appointed by the Governor as chairperson;
  - (b) the WorkSafe Commissioner;
  - (c) 2 persons employed in the Public Service under the *Public Sector Management Act 1994* Part 3 —
    - (i) both of whom are nominated by the Minister; and
    - (ii) at least 1 of whom has knowledge of, and experience in, the mining industry in the State;
  - (d) the following other persons appointed by the Governor —
    - (i) 2 persons nominated by the Chamber of Commerce and Industry of Western Australia Limited;
    - (ii) 3 persons nominated by UnionsWA, at least 1 of whom has knowledge of, and experience in, the mining industry in the State;
    - (iii) 3 persons nominated by the Minister after consultation with the bodies referred to in subparagraphs (i) and (ii), all of whom have knowledge of, or experience in, matters relating to work health and safety;
    - (iv) 1 person nominated by the Chamber of Minerals and Energy of Western Australia Inc.
- (3) If a body referred to in subclause (2)(d)(i), (ii) or (iv) does not make a nomination within 60 days after the day on which it is requested in writing by the Minister to do so —
  - (a) the Governor may appoint any person who is suitably qualified; and
  - (b) that person is taken to have been nominated under subclause (2)(d)(i), (ii) or (iv), as the case may be.

- (4) A nomination under subclause (2)(c) may —
- (a) be made from time to time; and
  - (b) be made by reference to the holder of a specified office; and
  - (c) may be expressed to operate for a specified period or in specified circumstances.
- (5) In addition to the name mentioned in subclause (1), the Commission may use, and operate under, the name “WorkSafe WA”.
- (6) A person (other than the Commission) must not use, or operate under, the name mentioned in subclause (1) or (5), or any name that is so similar that it is likely to be misunderstood as referring to the Commission.
- Penalty for this subclause:
- (a) for an individual, a fine of \$115 000;
  - (b) for a body corporate, a fine of \$570 000.
- (7) Subclause (6) does not prevent the WHS department from using, or operating under, the name of “WorkSafe Western Australia”, or a similar name, if that designation is given to it under the *Public Sector Management Act 1994* section 35.

**11. Deputy chairperson**

- (1) The Minister must appoint 1 of the Commission’s members to be its deputy chairperson.
- (2) The deputy chairperson must perform the functions of the chairperson as follows —
- (a) during any vacancy in the office of chairperson;
  - (b) while the chairperson is unable to act by reason of sickness, absence or other cause.
- (3) No act or omission of the deputy chairperson acting as the chairperson can be questioned on the ground that the occasion for so acting had not arisen or had ceased.

**12. Vacation of office of appointed members**

The office of an appointed member becomes vacant if —

- (a) the term of the person holding the office expires; or
- (b) that person —
  - (i) dies; or
  - (ii) becomes permanently incapable of performing the functions of the office; or
  - (iii) resigns from office by written notice to the Minister; or
  - (iv) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (v) is removed from office by the Governor on the grounds of neglect of duty, incompetence or the person's behaviour; or
  - (vi) is absent without the Minister's leave from 3 consecutive meetings of the Commission;

or

- (c) that person holds the office under clause 10(2)(d)(i), (ii) or (iv) and the person's nomination is revoked.

**13. Acting members**

- (1) Subclause (2) applies if —
  - (a) an office of an appointed member is vacant; or
  - (b) an appointed member is unable to act by reason of sickness, absence or other cause.
- (2) The Minister may appoint another person to act temporarily in the place of the appointed member, subject to the following —
  - (a) if the office is under clause 10(2)(d)(ii) or (iii) — the applicable requirement relating to knowledge and experience must continue to be met;
  - (b) if the office is under clause 10(2)(d)(i), (ii) or (iv) — the acting member must be nominated by the relevant body.

- (3) While acting in accordance with the terms of their appointment, an acting member has all of the functions and entitlements of the appointed member.
- (4) If an appointed member who is deputy chairperson is performing the functions of the chairperson, the Minister may, under subclause (2), appoint another person to act in the place of that appointed member.
- (5) No act or omission of a person acting in the place of another under this clause can be questioned on the ground that the occasion for the appointment or so acting had not arisen or had ceased.
- (6) The appointment of a person as an acting member may be terminated at any time by the Minister.

**14. Terms and conditions of appointed members**

- (1) An appointed member —
  - (a) holds office for the term, not exceeding 3 years, specified in their instrument of appointment; and
  - (b) may be reappointed.
- (2) Subject to subclause (3), an appointed member who is not a public service officer is entitled to the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.
- (3) In the case of an appointed member under clause 10(2)(d)(i), (ii) or (iv), the member may, by notice to the Minister —
  - (a) waive their entitlement to remuneration; and
  - (b) elect for any amounts that would otherwise be payable to the member to be paid instead as a fee to the body that nominated the member.

**15. Leave of absence**

The Minister may grant leave of absence to an appointed member on the terms and conditions determined by the Minister.

**16. Casual vacancies**

If the office of an appointed member becomes vacant under clause 12(b) or (c), a person appointed to the vacancy holds office only for the balance of the term of the person whose vacancy is being filled.

**17. Meetings of Commission**

- (1) The Commission's chairperson may at any time, and must when so requested by the Minister or by not less than 5 of the Commission's members, convene a meeting of the Commission to be held at a time and place determined by the chairperson.
- (2) The Commission must meet at least 6 times a year at intervals of not more than 3 months.
- (3) The chairperson must preside at any meeting of the Commission at which the chairperson is present.
- (4) If both the chairperson and the deputy chairperson are absent from a meeting of the Commission —
  - (a) the members present must elect by secret ballot one of their number to preside at that meeting; and
  - (b) that member has, in addition to the functions of a member of the Commission, the functions of the chairperson under this clause.
- (5) At a meeting of the Commission 7 members constitute a quorum.
- (6) Subject to subclause (7), at a meeting of the Commission —
  - (a) only members appointed under clause 10(2)(d) can vote; and
  - (b) if any question requiring a vote arises, the question is to be decided by a majority of the votes of the members appointed under clause 10(2)(d) if, and only if, not less than 6 of those members also constitute the majority.
- (7) If —
  - (a) on a vote at a meeting of the Commission, a majority of the votes of members appointed under clause 10(2)(d) is constituted by 5 of those members; and

- (b) on a vote at a subsequent meeting of the Commission on the same question, a majority of the votes is constituted by 5 of those members,

the chairperson may, at that subsequent meeting, cast a vote to be included in the majority vote.

- (8) Subject to the presence of a quorum, the Commission may act despite any vacancy in its membership.
- (9) A member of the Commission who has a pecuniary interest (whether direct or indirect) in any matter to be considered by the Commission must declare the nature of that interest at every meeting at which the matter is considered.
- (10) Subject to this Subdivision, the Commission may determine its own procedures.
- (11) The Commission must work for the attainment of the objects of this Act by achieving a consensus, so far as practicable, among its members.

## **18. Functions of Commission**

- (1) The Commission's functions are as follows —
  - (a) to inquire into, and report to the Minister upon, any matters referred to it by the Minister;
  - (b) to make recommendations to the Minister with respect to —
    - (i) this Act; and
    - (ii) any law, or provision of a law, relating to work health and safety that is administered by the Minister and any law, or provision of a law, relating to work health and safety that is prescribed for the purposes of this paragraph; and
    - (iii) subsidiary legislation, guidelines and codes of practice proposed to be made under or for the purposes of any prescribed law;
  - (c) to examine, review and make recommendations to the Minister in relation to existing and proposed registration or licensing schemes relating to work health and safety;

- (d) to provide advice to, and cooperate with, Government departments, public authorities, unions, employer organisations and other interested persons in relation to work health and safety;
  - (e) to formulate or recommend standards, specifications or other forms of guidance to assist persons conducting businesses or undertakings, and their workers, to maintain appropriate standards of work health and safety;
  - (f) to promote education and training in work health and safety as widely as possible;
  - (g) in cooperation with educational authorities or bodies, to devise and approve courses in relation to work health and safety;
  - (h) having regard to any criteria laid down by Safe Work Australia, to advise persons on training in work health and safety and to formulate and accredit training courses in work health and safety;
  - (i) to recommend to the Minister the establishment of public inquiries into any matter relating to work health and safety;
  - (j) to collect, publish and disseminate information on work health and safety;
  - (k) to formulate reporting procedures and monitoring arrangements for identification of workplace hazards and incidents in which injury or death is likely to occur at a workplace;
  - (l) to commission and sponsor research into work health and safety.
- (2) The Commission may issue for public review and comment any regulations, codes of practice or guidelines with respect to which it proposes under subclause (1)(b) to make any recommendations to the Minister.
- (3) The Commission must ensure, so far as practicable, that any information it provides is in a language and form that is appropriate for the persons to whom the information is directed.

- (4) The Minister must, within 60 days after the day on which the Minister receives a recommendation from the Commission under subclause (1), reply in writing to the Commission in relation to that recommendation.

**19. Advisory committees**

- (1) The Commission may at any time and, when so requested by the Minister, must appoint advisory committees to assist it in the performance of its functions.
- (2) Subject to this clause, an advisory committee must consist of the persons appointed by the Commission.
- (3) Subject to any direction of the Commission, an advisory committee may determine its own procedures.
- (4) The members of advisory committees are entitled to the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.
- (5) In appointing persons to be members of advisory committees, the Commission —
- (a) must, so far as practicable, appoint the following persons —
    - (i) persons who represent persons conducting businesses or undertakings;
    - (ii) persons who represent workers;
    - (iii) persons who have knowledge of, or experience in, matters relating to work health and safety;
  - and
  - (b) must have regard to the desirability of having a reasonable number of men and women, including persons of differing ethnic backgrounds and other groups with special needs.

**20. Annual report**

- (1) The Commission must, on or before 31 October in each year, prepare and submit to the Minister a report of its operations, and the operation of this Act and any prescribed law, during the year ending on the preceding 30 June.



- (2) The Minister must cause a copy of a report submitted under this clause to be laid before each House of Parliament no later than 12 sitting days after the day on which the Minister receives the report.

**21. Staff to assist Commission**

Persons may be appointed or made available under the *Public Sector Management Act 1994* Part 3 to assist the Commission in the performance of its functions.

**Division 4 — Mining and Petroleum Advisory Committee**

**Subdivision 1 — Preliminary**

**22. Terms used**

In this Division —

**Commission** means the Work Health and Safety Commission;

**Committee** means the Mining and Petroleum Advisory Committee;

**mining and petroleum industry** means —

- (a) the mining industry in the State; and
- (b) activities that are regulated by the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*.

**Subdivision 2 — Main provisions**

**23. Establishment of Mining and Petroleum Advisory Committee**

- (1) There is to be an advisory committee called the Mining and Petroleum Advisory Committee.
- (2) The Committee's members are to be appointed by the Minister after consultation with the prescribed bodies.
- (3) The prescribed bodies must include —
  - (a) at least 1 body that represents persons conducting businesses or undertakings in the mining and petroleum industry; and

- (b) at least 1 body that represents workers in the mining and petroleum industry.
- (4) There must be at least 6 members.
- (5) At least 2 members must be appointed to represent persons conducting businesses or undertakings in the mining and petroleum industry.
- (6) An appointment for the purposes of subclause (5) must be made on the recommendation of a prescribed body referred to in subclause (3)(a).
- (7) At least 2 members must be appointed to represent workers in the mining and petroleum industry.
- (8) An appointment for the purposes of subclause (7) must be made on the recommendation of a prescribed body referred to in subclause (3)(b).
- (9) At least 2 members must be persons considered by the Minister to be independent of the prescribed bodies.
- (10) The Minister must appoint 1 of the members referred to in subclause (9) as the Committee's chairperson.
- (11) The members are entitled to the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.
- (12) Subject to any directions given to it by the Minister, the Committee is to determine its own procedures.

**24. Functions of Committee**

The regulations may give functions to the Committee that involve the Committee providing advice to, or otherwise assisting, the Minister or the Commission (or both) in relation to work health and safety in, or relating to, the mining and petroleum industry.

**25. Annual report and staff**

For the purposes of clauses 20 and 21, the Committee is taken to be an advisory committee of the Commission.

## **Division 5 — Work Health and Safety Tribunal**

### **Subdivision 1 — Preliminary**

#### **26. Terms used**

In this Division —

**Chief Commissioner** and **commissioner** have the meanings given in the *Industrial Relations Act 1979* section 7(1);

**WAIRC** means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*.

### **Subdivision 2 — Main provisions**

#### **27. Establishment of Work Health and Safety Tribunal**

- (1) The WAIRC has the jurisdiction given to the Work Health and Safety Tribunal under this Act and, in exercising that jurisdiction, the WAIRC is to be known as the Work Health and Safety Tribunal.
- (2) A determination of a matter by the Tribunal has effect according to its substance and an order containing the determination is an entitlement provision as defined in the *Industrial Relations Act 1979* section 7(1).
- (3) In accordance with the *Industrial Relations Act 1979* section 7(3), any matter within the jurisdiction of the Tribunal is not an industrial matter for the purposes of that Act.

*[Clause 27 amended: No. 30 of 2021 s. 128(1).]*

#### **28. Jurisdiction to be exercised by commissioner with requisite qualifications**

- (1) The jurisdiction of the Tribunal is to be exercised —
  - (a) by the commissioner designated under the *Industrial Relations Act 1979* section 16(2A) to exercise the jurisdiction; or
  - (b) if that commissioner is unable to act by reason of sickness, absence or other cause, by —
    - (i) another commissioner; or

- (ii) an acting commissioner appointed under the *Industrial Relations Act 1979* section 17, to whom the Chief Commissioner allocates the matter under the *Industrial Relations Act 1979* section 16.
- (2) Without limiting subclause (1)(b), a matter may be allocated to the Chief Commissioner under that subclause.
- (3) In allocating a matter for the purposes of subclause (1)(b), the Chief Commissioner must have regard to the desirability of the commissioner concerned having relevant knowledge in the field of work health and safety.
- (4) A commissioner to whom a matter is allocated under subclause (1)(b) may continue and complete the hearing and determination of part-heard proceedings after the commissioner referred to in subclause (1)(a) has resumed that commissioner's duties.
- (5) A person who is a commissioner may, even though the person's designation has ceased to have effect under the *Industrial Relations Act 1979* section 16(2B), continue and complete the hearing and determination of part-heard proceedings after another commissioner has been designated under section 16(2A) of that Act.

**29. Practice, procedure and appeals**

- (1) The provisions of the *Industrial Relations Act 1979* sections 22B, 26(1), (2) and (3), 27, 28, 31(1), (2), (3) and (5), 33, 34(1), (3) and (4), 36 and 49 that apply to and in relation to the exercise of the jurisdiction of the WAIRC constituted by a commissioner apply to the exercise of the jurisdiction of the Tribunal —
  - (a) with any modifications that are prescribed under section 113 of that Act; and
  - (b) with any other modifications that are necessary or appropriate.

- (2) For the purposes of subclause (1), the *Industrial Relations Act 1979* section 31(1) applies as if paragraph (c) were deleted and the following paragraph were inserted —

(c) by a legal practitioner.

**30. Conciliation**

- (1) This clause applies to any matter (the *relevant matter*) that comes before the Tribunal, except —
- (a) any of the following decisions (as defined in section 223(4)) that comes before the Tribunal under Part 12 Division 3 —
    - (i) a decision made, or taken to have been made, on an internal review under Part 12 Division 2 where the internal review is of a decision of an inspector under section 102, 191, 195, 198 or 201;
    - (ii) a decision of the regulator under section 102, 179, 180, 191, 194, 195, 198, 201 or 207;
  - or
  - (b) any prescribed matter.
- (2) If the Tribunal considers that the issues involved in the relevant matter may be resolved by conciliation —
- (a) the Tribunal may endeavour to assist the parties to reach an agreement on those issues; and
  - (b) for that purpose, the Tribunal may —
    - (i) arrange conferences of the parties or their representatives presided over by the Tribunal; and
    - (ii) arrange for the parties or their representatives to confer among themselves at a conference at which the Tribunal is not present; and
    - (iii) otherwise encourage the parties to exchange or divulge attitudes or information that in the opinion of the Tribunal would assist in the resolution of the issues.

- (3) The Tribunal may give any direction or make any order or declaration that the Tribunal thinks expedient for the purposes of this clause, and any direction, order or declaration is enforceable as if it were given or made under the *Industrial Relations Act 1979* section 32.
- (4) If the Tribunal gives or makes a direction, order or declaration under subclause (3), the Tribunal must —
- (a) if it is given or made orally, reduce the direction, order or declaration to writing as soon as practicable; and
  - (b) make the text of the direction, order or declaration available to the parties as soon as practicable after it is given or made.
- (5) If the Tribunal —
- (a) takes action under subclause (2)(a); and
  - (b) is satisfied that the parties have reached agreement on all of the issues involved,
- the Tribunal may, with the consent of the parties, determine the relevant matter in terms of that agreement.
- (6) If the Tribunal —
- (a) takes action under subclause (2)(a); and
  - (b) subclause (5)(b) does not apply,
- the Tribunal must determine the relevant matter.
- (7) In making a determination referred to in subclause (6), the Tribunal must endeavour to ensure that the relevant matter is resolved —
- (a) taking into account any agreement reached by the parties on any particular issue; and
  - (b) subject to paragraph (a), on terms that could reasonably have been agreed between the parties in the first instance or by conciliation.

**31. Certain matters to be heard together**

- (1) In this clause —
- employee* and *employer* have the meanings given in the *Industrial Relations Act 1979* section 7(1).

- (2) Subclauses (3) and (4) apply if —
- (a) under the *Industrial Relations Act 1979*, an employee has referred to the WAIRC a claim that the employee has been harshly, oppressively or unfairly dismissed from employment; and
  - (b) a matter —
    - (i) involving the same employer and employee; and
    - (ii) arising out of the same circumstances,has come before the Tribunal.
- (3) The employee may in writing request that the matter referred to in subclause (2)(a) be heard and determined by the commissioner who is hearing and determining the matter referred to in subclause (2)(b).
- (4) If the employee makes a request, the Chief Commissioner, in exercising the powers conferred by the *Industrial Relations Act 1979* section 16, must allocate the hearing and determination of the matter accordingly.
- (5) If —
- (a) an employee has referred to the WAIRC a claim of the kind described in the *Industrial Relations Act 1979* section 29(1)(d); and
  - (b) the claim involves the same employer and arises out of the same circumstances as a matter that has come before the Tribunal,

nothing in this clause prevents the Chief Commissioner exercising the powers conferred by section 16 of that Act so that the claim is heard and determined by the commissioner who is hearing and determining the matter referred to in paragraph (b).

[Clause 31 amended: No. 30 of 2021 s. 128(2).]

## **Schedule 2 — Regulation-making powers**

[s. 276]

### **1. Duties**

- (1) Matters relating to the way in which duties imposed by this Act are to be performed.
- (2) Matters relating to the regulation or prohibition of specified activities or a specified class of activities —
  - (a) at workplaces or a specified class of workplaces; or
  - (b) by a specified class of persons on whom duties or obligations are imposed by this Act,to eliminate or minimise risks to health and safety.
- (3) Imposing duties on persons in relation to any matter provided for under the regulations.

### **2. Incidents**

Matters relating to incidents at workplaces, including —

- (a) regulating or requiring the taking of any action to avoid an incident at a workplace or in the course of conducting a business or undertaking; and
- (b) regulating, requiring or prohibiting the taking of any action in the event of an incident at a workplace or in the conduct of a business or undertaking.

### **3. Plant, substances or structures**

Matters relating to plant, substances or structures, including —

- (a) regulating the storage and handling of plant, substances and structures; and
- (b) regulating or requiring —
  - (i) the examination, testing, labelling, maintenance or repair of plant and structures; or
  - (ii) the examination, testing, analysis or labelling of any substance.



**4. Protection and welfare of workers**

Matters relating to the protection and welfare of workers, including —

- (a) regulating or requiring the provision and use of protective clothing or equipment, or rescue equipment, in specified circumstances; and
- (b) regulating or requiring the provision of specified facilities for the welfare of workers at the workplace; and
- (c) matters relating to health and safety in relation to accommodation provided to workers.

**5. Hazards and risks**

Matters relating to hazards and risks, including —

- (a) the prescribing of standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard; and
- (b) matters relating to safety cases, safety management plans and safety management systems (however described); and
- (c) matters relating to measures to control risks.

**6. Records and notices**

- (1) The keeping and availability of records of health and safety representatives and deputy health and safety representatives.
- (2) The keeping of records in relation to incidents.
- (3) The keeping of records of specified activities, matters or things to be kept by specified persons.
- (4) The giving of notice of or information about specified activities, matters or things to the regulator, an inspector or other specified person.

**cl. 7**

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**7. Authorisations**

- (1) Matters relating to authorisations (including licences, registrations and permits), and qualifications and experience, for the purposes of Part 4 or the regulations, including providing for —
- (a) applications for the grant, issue, renewal, variation, suspension and cancellation of authorisations, including the minimum age to be eligible for an authorisation; and
  - (b) the evidence and information to be provided in relation to applications, including the provision of statutory declarations; and
  - (c) exemptions; and
  - (d) variations of authorisations by the regulator whether on application or otherwise; and
  - (e) authorisation of persons as trainers and assessors; and
  - (f) examination of applicants for authorisations; and
  - (g) conditions of authorisations; and
  - (h) fees for applications for the grant, issue, renewal and variation of authorisations.
- (2) The recognition of authorisations under corresponding WHS laws and exceptions to recognition.
- (3) The sharing of information with corresponding regulators relating to the grant, issue, renewal, variation, suspension or cancellation of authorisations.

**8. Work groups**

Matters relating to work groups and variation of work groups and agreements or variations of agreements relating to the determination of work groups.

**9. Health and safety committees and health and safety representatives**

Matters relating to health and safety committees and health and safety representatives.

**10. Issue resolution**

Matters relating to issue resolution including —

- (a) the minimum requirements for an agreed procedure for resolving an issue; and
- (b) the requirements for a default issue resolution procedure where there is no agreed procedure.

**11. Identification of inspectors**

- (1) Matters relating to identity cards.
- (2) Ways in which inspectors may identify themselves.

**12. Forfeiture**

Matters relating to —

- (a) costs of forfeiture and disposal of forfeited things; and
- (b) disposal of seized things and forfeited things.

**13. Review of decisions**

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

- (a) prescribing decisions as reviewable decisions for the purposes of Part 12 or for the purposes of the regulations; and
- (b) prescribing procedures for internal and external review of decisions under the regulations; and
- (c) conferring jurisdiction on the Tribunal to conduct reviews under the regulations.

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## Notes

This is a compilation of the *Work Health and Safety Act 2020* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

### Compilation table

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Work Health and Safety Act 2020</i>	36 of 2020	10 Nov 2020	Pt. 1 (other than Div. 2-5): 10 Nov 2020 (see s. 2(1)(a)); Pt. 14 (other than Div. 1-3): 11 Nov 2020 (see s. 2(1)(b)); Act other than Pt. 1 Div. 1 and Pt. 14 Div. 4: 31 Mar 2022 (see s. 2(1)(c) and SL 2022/18 cl. 2)
<i>Industrial Relations Legislation Amendment Act 2021 Pt. 7</i> <sup>1</sup>	30 of 2021	22 Dec 2021	20 Jun 2022 (see s. 2(1)(b) and (2) and SL 2022/79 cl. 2)

### Other notes

- <sup>1</sup> The *Industrial Relations Legislation Amendment Act 2021 Pt. 7 Div. 1 Subdiv. 2* was deleted when s. 5(2) of that Act came into operation (see Pt. 7 Div. 2 and SL 2022/18 cl. 2).

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
A .....	272A(3)
adverse publicity order.....	236(1)
another work group.....	69(3)
appointed member.....	Sch. 1 cl. 9
approved code of practice .....	4
assault .....	190(1)
assistant.....	166(1), 167D(1)
authorisation function .....	45A(1)
authorisation provision.....	45A(1)
authorised.....	4, 40
automated decision .....	45C(1)
Category 1 offence.....	4
Category 2 offence.....	4
Category 3 offence.....	4
cease work under this Division .....	83
Chief Commissioner .....	Sch. 1 cl. 26
chief executive .....	4
Chief Inspector of Mines .....	4
Chief Inspector Petroleum Safety .....	4
commencement day .....	373
Commission .....	Sch. 1 cl. 9 and 22
Commissioner .....	406(1)
commissioner.....	Sch. 1 cl. 26
Committee.....	Sch. 1 cl. 22
compliance period.....	194(4)
compliance powers .....	4
condition .....	4
conduct.....	30, 229C, 244(1), 244H(1)
construct.....	4
continue to apply.....	373
continuing authorisation.....	376(6)
corresponding regulator .....	4
corresponding WHS law .....	4
court-ordered WHS undertaking.....	239(1)
covert operation .....	4
Crown agency .....	4
dangerous incident .....	4, 37
dangerous operation.....	4
demolition .....	4
design.....	4

**Defined terms**

---

designer .....	22(1)
device .....	167C(1)
disclose .....	4
discriminatory conduct.....	4, 105(1) and (2)
document.....	4
DPP .....	229C
due diligence .....	27(5)
eligible person.....	4, 112(6), 223(1) and (3)
employee.....	Sch. 1 cl. 31(1)
employer .....	Sch. 1 cl. 31(1)
employer organisation.....	4
external review.....	229(1)
handling .....	4
health.....	4
health and safety duty .....	4, 30
health and safety representative .....	4
import.....	4
importer.....	24(1)
indemnify .....	272A(1)
industrial manslaughter.....	4
inspector.....	4
insurance policy .....	272A(1)
internal review .....	224(1)
internal reviewer .....	4
IR entry authority.....	4
levy period .....	425(1)
levy regulations.....	423(1)
listed OSH law .....	412(1), 413(1), 414(1)
local government member.....	4
lock-up .....	103(1)
manufacturer .....	23(1)
medical practitioner .....	36(2)
mining and petroleum industry .....	Sch. 1 cl. 22
MSIA .....	373
non-petroleum repealed enactment .....	390(1)
notice.....	202, 244G(1)
notifiable incident .....	4, 35
offender.....	234
officer.....	4, 4A(1)
original warrant.....	167A(3)
OSHA .....	373
OSH Tribunal.....	416(1)
parties.....	80(1)
PCBU.....	30A(3)
person conducting a business or undertaking.....	4

person entitled.....	179(9), 180(4), 223(5)
person with management or control of a workplace .....	20(1)
person with management or control of fixtures, fittings or plant at a workplace.....	21(1)
petroleum repealed enactment .....	390(1)
PGERA .....	373
place.....	8(2)
place of seizure .....	177(1)
plant .....	4
PPA .....	373
prescribed time.....	224(3)
prison .....	103(1)
prisoner .....	103(1)
prohibited reason.....	4, 106
prohibition notice .....	195(3)
prosecution proceedings.....	244D(1)
provide .....	4
P(SL)A .....	373
public corporation .....	4
quarter .....	423(1)
reasonably practicable.....	4, 18
regulator .....	4
related thing .....	45B(1)
relevant matter .....	Sch. 1 cl. 30(1)
relevant person conducting a business or undertaking .....	164(4)
relevant procedure.....	405(1)
relevant use .....	26A(1)
relevant work group .....	69(1)
remote communication.....	166A(1)
remuneration .....	4
repealed enactment.....	385(1), 388(1), 393(1), 395(1), 396, 401, 408(1)
representative .....	4
responsible agency .....	244C(1)
reviewable decision.....	4
reviewable decisions .....	223(1)
safety and health magistrate.....	417(1)
safety and health offence .....	417(1)
serious harm.....	30, 31(3)
serious injury or illness .....	4, 36(1)
services .....	26A(1)
specified .....	376(1)
started.....	391
State coal mining engineer.....	407(1)
State mining engineer .....	407(1)
strata company .....	5(10)

Defined terms

---

structure .....	4
substance .....	4
successor in law .....	244E(1)
supplier .....	25(1), 393(1)
supply .....	4, 6(1), 393(1)
transitional matter .....	376(1)
transitional regulations .....	373
Tribunal .....	4
union .....	4
use .....	26A(1)
volunteer .....	4
volunteer association .....	5(10)
WAIRC .....	Sch. 1 cl. 26
WA Police .....	4
WHS authority .....	4
WHS department .....	4
WHS service provider .....	26A(2)
WHS services .....	26A(1)
WHS undertaking .....	4, 216(1)
witness .....	155A(5)
worker .....	4, 7(1) and (3)
work group .....	4
Work Health and Safety Commission .....	4
workplace .....	4, 8(1)