South Australia

Work Health and Safety Act 2012

An Act to provide for the health, safety and welfare of persons at work; and for other purposes.

Contents

Part 1—Preliminary

Division 1—Introduction

1 Short title

Division 2—Object

3 Object

Division 3—Interpretation

Subdivision 1—Definitions

4 Definitions

Subdivision 2—Other important terms

5 Meaning of *person conducting a business or undertaking*
6 Meaning of *supply*
7 Meaning of *worker*
8 Meaning of *workplace*
9 Examples and notes

Division 4—Application of Act

10 Act binds the Crown
11 Extraterritorial application
12 Scope

Division 5—SafeWork SA Advisory Committee

12A Establishment of committee
12B Terms and conditions of office
12C Functions
12D Procedures at meetings
12E Conflict of interest
12F Confidentiality
12G Use of staff and facilities

Part 2—Health and safety duties

Division 1—Introductory

Subdivision 1—Principles that apply to duties

13 Principles that apply to duties
14 Duties not transferrable
15 Person may have more than one duty
16 More than one person can have a duty
17 Management of risks

Subdivision 2—What is reasonably practicable

18 What is *reasonably practicable* in ensuring health and safety

Division 2—Primary duty of care

19 Primary duty of care

Division 3—Further duties of persons conducting businesses or undertakings

20 Duty of persons conducting businesses or undertakings involving management or control of workplaces
21 Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces
22 Duties of persons conducting businesses or undertakings that design plant, substances or structures
23 Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures
24 Duties of persons conducting businesses or undertakings that import plant, substances or structures
25 Duties of persons conducting businesses or undertakings that supply plant, substances or structures
26 Duty of persons conducting businesses or undertakings that install, construct or commission plant or structures

Division 4—Duty of officers, workers and other persons

27 Duty of officers
28 Duties of workers
29 Duties of other persons at the workplace

Division 5—Offences and penalties

30 Health and safety duty
30A Industrial manslaughter
31 Gross negligence or reckless conduct—Category 1
32 Failure to comply with health and safety duty—Category 2
33 Failure to comply with health and safety duty—Category 3
34 Exceptions

Part 3—Incident notification

35 What is a *notifiable incident*
36 What is a *serious injury or illness*
37 What is a *dangerous incident*
38 Duty to notify of notifiable incidents

39 Duty to preserve incident sites

Part 4—Authorisations

40 Meaning of *authorised*
41 Requirements for authorisation of workplaces
42 Requirements for authorisation of plant or substance
43 Requirements for authorisation of work
44 Requirements for prescribed qualifications or experience
45 Requirement to comply with conditions of authorisation

Part 5—Consultation, representation and participation

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

46 Duty to consult with other duty holders

Division 2—Consultation with workers

47 Duty to consult workers
48 Nature of consultation
49 When consultation is required

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

Subdivision 2—Determination of work groups

51 Determination of work groups
52 Negotiations for agreement for work group
53 Notice to workers
54 Failure of negotiations

Subdivision 3—Multiple-business work groups

55 Determination of work groups of multiple businesses
56 Negotiation of agreement for work groups of multiple businesses
57 Notice to workers
58 Withdrawal from negotiations or agreement involving multiple businesses
59 Effect of Subdivision on other arrangements

Subdivision 4—Election of health and safety representatives

60 Eligibility to be elected
61 Procedure for election of health and safety representatives
62 Eligibility to vote
63 When election not required
64 Term of office of health and safety representative
65 Disqualification of health and safety representatives
66 Immunity of health and safety representatives
67 Deputy health and safety representatives

Subdivision 5—Powers and functions of health and safety representatives

68 Powers and functions of health and safety representatives
69 Powers and functions generally limited to the particular work group

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

70 General obligations of person conducting business or undertaking
71 Exceptions from obligations under section 70(1)
72 Obligation to train health and safety representatives
73 Obligation to share costs if multiple businesses or undertakings
74 List of health and safety representatives

Division 4—Health and safety committees

75 Health and safety committees
76 Constitution of committee
77 Functions of committee
78 Meetings of committee
79 Duties of person conducting business or undertaking

Division 5—Issue resolution

80 Parties to an issue
81 Resolution of health and safety issues
82 Referral of issue to regulator for resolution by inspector

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

83 Definition of *cease work under this Division*
84 Right of worker to cease unsafe work
85 Health and safety representative may direct that unsafe work cease
85A Reasonable concern
86 Worker to notify if ceases work
87 Alternative work
88 Continuity of engagement of worker
89 Request to regulator to appoint inspector to assist

Division 7—Provisional improvement notices

90 Provisional improvement notices
91 Provisional improvement notice to be in writing
92 Contents of provisional improvement notice
93 Provisional improvement notice may give directions to remedy contravention
94 Minor changes to provisional improvement notice
95 Issue of provisional improvement notice
96 Health and safety representative may cancel notice
97 Display of provisional improvement notice
98 Formal irregularities or defects in notice
99 Offence to contravene a provisional improvement notice
100 Request for review of provisional improvement notice
101 Regulator to appoint inspector to review notice
102 Decision of inspector on review of provisional improvement notice

Division 7A—Work health and safety disputes

102A Definitions for Division
102B Notice of dispute may be given to SAET
102C Action for settling dispute
102D Review of particular decisions made by inspector
102E Decision not to deal with dispute

102F Costs

Division 8—Part not to apply to prisoners

103 Part does not apply to prisoners

Part 6—Discriminatory, coercive and misleading conduct

Division 1—Prohibition of discriminatory, coercive or misleading conduct

104 Prohibition of discriminatory conduct
105 What is *discriminatory conduct*
106 What is a *prohibited reason*
107 Prohibition of requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct
108 Prohibition of coercion or inducement
109 Misrepresentation

Division 2—Criminal proceedings in relation to discriminatory conduct

110 Proof of discriminatory conduct
111 Order for compensation or reinstatement

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
113 Procedure for civil actions for discriminatory conduct

Division 4—General

114 General provisions relating to orders
115 Prohibition of multiple actions

Part 7—Workplace entry by WHS entry permit holders

Division 1—Introductory

116 Definitions

Division 2—Entry to inquire into suspected contraventions

117 Entry to inquire into suspected contraventions
118 Rights that may be exercised while at workplace
119 Notice of entry
120 Entry to inspect employee records or information held by another person

Division 3—Entry to consult and advise workers

121 Entry to consult and advise workers
122 Notice of entry

Division 4—Requirements for WHS entry permit holders

123 Contravening WHS entry permit conditions
124 WHS entry permit holder must also hold permit under other law
125 WHS entry permit to be available for inspection
126 When right may be exercised
127 Where the right may be exercised
128 Work health and safety requirements

129 Residential premises
130 WHS entry permit holder not required to disclose names of workers

Division 5—WHS entry permits

131 Application for WHS entry permit
132 Consideration of application
133 Eligibility criteria
134 Issue of WHS entry permit
135 Conditions on WHS entry permit
136 Term of WHS entry permit
137 Expiry of WHS entry permit
138 Application to revoke WHS entry permit
139 Authorising authority must permit WHS entry permit holder to show cause
140 Determination of application

Division 6—Dealing with disputes

141 Application for assistance of inspector to resolve dispute
142 Authorising authority may deal with a dispute about a right of entry under this Act
143 Contravening order made to deal with dispute

Division 7—Prohibitions

144 Person must not refuse or delay entry of WHS entry permit holder
145 Person must not hinder or obstruct WHS entry permit holder
146 WHS entry permit holder must not delay, hinder or obstruct any person or disrupt work at workplace
147 Misrepresentations about things authorised by this Part
148 Unauthorised use or disclosure of information or documents

Division 8—General

149 Return of WHS entry permits
150 Union to provide information to authorising authority
151 Register of WHS entry permit holders

Part 8—The regulator

Division 1—Functions of regulator

152 Functions of regulator
152A Right of regulator to intervene in proceedings
153 Powers of regulator
154 Delegation by regulator

Division 2—Powers of regulator to obtain information

155 Powers of regulator to obtain information

Part 9—Securing compliance

Division 1—Appointment of inspectors

156 Appointment of inspectors
157 Identity cards
158 Accountability of inspectors
159 Suspension and ending of appointment of inspectors

Division 2—Functions and powers of inspectors

160 Functions and powers of inspectors
161 Conditions on inspectors' compliance powers
162 Inspectors subject to regulator's directions

Division 3—Powers relating to entry

Subdivision 1—General powers of entry

163 Powers of entry
164 Notification of entry
165 General powers on entry
166 Persons assisting inspectors

Subdivision 2—Search warrants

167 Search warrants
168 Announcement before entry on warrant
169 Copy of warrant to be given to person with management or control of place

Subdivision 3—Limitation on entry powers

170 Places used for residential purposes

Subdivision 4—Specific powers on entry

171 Power to require production of documents and answers to questions
172 Protection against self-incrimination
173 Warning to be given
174 Powers to copy and retain documents
175 Power to seize evidence etc
176 Inspector's power to seize dangerous workplaces and things
177 Powers supporting seizure
178 Receipt for seized things
179 Forfeiture of seized things
180 Return of seized things
181 Access to seized things

Division 4—Damage and compensation

182 Damage etc to be minimised
183 Inspector to give notice of damage
184 Compensation

Division 5—Other matters

185 Power to require name and address
186 Inspector may take affidavits
187 Attendance of inspector at inquiries

Division 6—Offences in relation to inspectors

188 Offence to hinder or obstruct inspector
189 Offence to impersonate inspector
190 Offence to assault, threaten or intimidate inspector

Part 10—Enforcement measures

Division 1—Improvement notices

191 Issue of improvement notices
192 Contents of improvement notices
193 Compliance with improvement notice
194 Extension of time for compliance with improvement notices

Division 2—Prohibition notices

195 Power to issue prohibition notice
196 Contents of prohibition notice
197 Compliance with prohibition notice

Division 3—Non-disturbance notices

198 Issue of non-disturbance notice
199 Contents of non-disturbance notice
200 Compliance with non-disturbance notice
201 Issue of subsequent notices

Division 4—General requirements applying to notices

202 Application of Division
203 Notice to be in writing
204 Directions in notices
205 Recommendations in notice
206 Changes to notice by inspector
207 Regulator may vary or cancel notice
208 Formal irregularities or defects in notice
209 Issue and giving of notice
210 Display of notice

Division 5—Remedial action

211 When regulator may carry out action
212 Power of the regulator to take other remedial action
213 Costs of remedial or other action

Division 6—Injunctions

214 Application of Division
215 Injunctions for noncompliance with notices

Part 11—Enforceable undertakings

216 Regulator may accept WHS undertakings
217 Notice of decision and reasons for decision
218 When a WHS undertaking is enforceable
219 Compliance with WHS undertaking
220 Contravention of WHS undertaking
221 Withdrawal or variation of WHS undertaking
222 Proceeding for alleged contravention

Part 12—Review of decisions

Division 1—Reviewable decisions

223 Which decisions are reviewable

Division 2—Internal review

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

Division 3—External review

229 Application for external review

Part 13—Legal proceedings

Division 1—General matters

230 Prosecutions
231 Procedure if prosecution is not brought
232 Limitation period for prosecutions
233 Multiple contraventions of health and safety duty provision

Division 2—Sentencing for offences

234 Application of this Division
235 Orders generally
236 Adverse publicity orders
237 Orders for restoration
238 Work health and safety project orders
239 Release on the giving of a court-ordered WHS undertaking
240 Injunctions
241 Training orders
242 Offence to fail to comply with order

Division 3—Infringement notices

243 Infringement notices

Division 4—Offences by bodies corporate

244 Imputing conduct to bodies corporate

Division 5—The Crown

245 Offences and the Crown
246 WHS civil penalty provisions and the Crown
247 Officers
248 Responsible agency for the Crown

Division 6—Public authorities

249 Application to public authorities that are bodies corporate
250 Proceedings against public authorities
251 Imputing conduct to public authorities

252 Officer of public authority
253 Proceedings against successors to public authorities

Division 7—WHS civil penalty provisions

254 When is a provision a WHS civil penalty provision
255 Proceedings for contravention of WHS civil penalty provision
256 Involvement in contravention treated in same way as actual contravention
257 Contravening a civil penalty provision is not an offence
258 Civil proceeding rules and procedure to apply
259 Proceeding for a contravention of a WHS civil penalty provision
260 Proceeding may be brought by the regulator or an inspector
260A Proceeding may be brought by a party for contravention of certain orders relating to arbitrations
261 Limitation period for WHS civil penalty proceedings
262 Recovery of a monetary penalty
263 Civil double jeopardy
264 Criminal proceedings during civil proceedings
265 Criminal proceedings after civil proceedings
266 Evidence given in proceedings for contravention of WHS civil penalty provision not admissible in criminal proceedings

Division 8—Civil liability not affected by this Act

267 Civil liability not affected by this Act

Part 14—General

Division 1—General provisions

268 Offence to give false or misleading information
269 Act does not affect legal professional privilege
270 Immunity from liability
271 Confidentiality of information
271A Additional ways that regulator may disclose information
272 No contracting out
272A Insurance or other indemnity against penalties
272B Officer may be taken to have committed offence against section 272A
273 Person not to levy workers

Division 2—Codes of practice

274 Approved codes of practice
275 Use of codes of practice in proceedings

Division 3—Regulation-making powers

276 Regulation-making powers

Division 4—Reviews

277 Reviews

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

Schedule 2—Local tripartite consultation arrangements

Part 2—The Mining and Quarrying Occupational Health and Safety Committee

12 The Committee
13 Application of funds
14 Ministerial control

Schedule 3—Regulation-making powers

1 Duties
2 Incidents
3 Plant, substances or structures
4 Protection and welfare of workers
5 Hazards and risks
6 Records and notices
7 Authorisations
8 Work groups
9 Health and safety committees and health and safety representatives
10 Issue resolution
11 WHS entry permits
12 Identity cards
13 Forfeiture
14 Review of decisions

Schedule 4—Supplementary panel members

1 Supplementary panel members

Schedule 5—Provisions of local application

1 Provision of information by RTWSA
2 Registration of employers
3 Executive Director

Schedule 6—Transitional provisions

Part 9—Transitional provisions

12 Interpretation
13 Duties of designers
14 Duties of manufacturers
15 Duties of importers
16 Duties of suppliers
17 Duties of persons who install, construct or commission plant or structures
18 Appointments
19 Training
20 Members of committees
21 Functions and powers of inspectors
22 Disqualifications
23 Codes of practice
24 Authorisations
25 Exemptions
25A Prosecutions under *Occupational Health, Safety and Welfare Act 1986*
26 Other provisions

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Division 1—Introduction

1—Short title

This Act may be cited as the *Work Health and Safety Act 2012*.

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 or from specified types of substances or plant; and

(b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety; and

(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and

(d) promoting the provision of advice, information, education and training in relation to work health and safety; and

(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and

(f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and

(g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and

(h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.

(2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work, or from specified types of substances or plant, as is reasonably practicable.

Division 3—Interpretation

Subdivision 1—Definitions

4—Definitions

(1) In this Act, unless the contrary intention appears—

advisory committee means the *SafeWork SA Advisory Committee* established under Division 5;

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

authorised, in Part 4—see section 40;

authorising authority means SAET;

Category 1 offence—see section 31;

Category 2 offence—see section 32;

Category 3 offence—see section 33;

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

condition includes limitation and restriction;

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

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

corresponding WHS law means—

(a) the *Dangerous Substances Act 1979*; or

(b) the *Explosives Act 1936*; or

(c) the *Fair Work Act 1994*; or

(d) the *Mines and Works Inspection Act 1920*; or

(e) the *Offshore Minerals Act 2000*; or

(f) the *Petroleum (Submerged Lands) Act 1982*; or

(g) the *Petroleum and Geothermal Energy Act 2000*; or

(h) the *Petroleum Products Regulation Act 1995*; or

(i) any other Act brought within the ambit of this definition by the regulations; or

(j) a law of another Australian jurisdiction corresponding, or substantially corresponding, to this Act; or

(k) a law of another Australian jurisdiction brought within the ambit of this definition by the regulations;

dangerous incident, in Part 3—see section 37;

demolition includes deconstruction;

Department means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

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

(a) design of part of the plant, substance or structure; and

(b) redesign or modify a design;

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

discriminatory conduct, in Part 6—see section 105;

document includes record;

emergency services worker means—

(a) a police officer; or

(b) a member of the South Australian Metropolitan Fire Service, the South Australian Country Fire Service or the South Australian State Emergency Service; or

(c) a fire control officer appointed under the *Fire and Emergency Services Act 2005*; or

(d) the State Co-ordinator or an authorised officer under the *Emergency Management Act 2004*; or

(e) a person brought within the ambit of this definition by the regulations;

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

employer organisation means—

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

(b) an association of employers that is registered or recognised as such an association (however described) under a State or Territory industrial law;

engage in conduct means doing an act or omitting to do an act;

Executive Director means the person for the time being holding, or acting in, the position of Executive Director under Schedule 5 clause 3;

Fair Work Act means the *Fair Work Act 2009* of the Commonwealth;

handling includes transport;

health means physical and psychological health;

health and safety duty—see section 30;

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

import means to bring into the jurisdiction from outside Australia;

industrial manslaughter offence—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;

local authority means a council under the *Local Government Act 1999*;

Magistrates Court means the Magistrates Court of South Australia;

medical treatment means treatment by a medical practitioner registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

notifiable incident—see section 35;

officer means—

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

(b) an officer of the Crown within the meaning of section 247; or

(c) an officer of a public authority within the meaning of section 252,

other than an elected member of a local authority acting in that capacity;

official of a union, in Part 7—see section 116;

personal information has the same meaning as it has in the *Privacy Act 1988* of the Commonwealth;

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;

public authority means—

(a) an agency or instrumentality of the Crown; or

(b) an administrative unit or department within the Public Service of this or any other State, or of the Commonwealth;

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

regulator means the Executive Director;

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

relevant union, in Part 7—see section 116;

relevant worker, in Part 7—see section 116;

representative—

(a) in relation to a person conducting a business or undertaking, means—

(i) an employer organisation representing the person conducting the business or undertaking; or

(ii) any other person that the person conducting the business or undertaking authorises to represent them; and

(b) in relation to a worker, means—

(i) the health and safety representative for the worker; or

(ii) a union entitled to represent the industrial interests of the worker; or

(iii) any other person that the worker authorises to represent them;

review committee means a review committee constituted under Schedule 4;

RTWSA means the Return to Work Corporation of South Australia;

SAET means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

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

State includes Territory;

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

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

(a) buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels); and

(b) any component of a structure; and

(c) part of a structure;

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

supply—see section 6;

this Act includes the regulations;

union means—

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

(b) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under a State or Territory industrial law;

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

WHS entry permit means a WHS entry permit issued under Part 7;

WHS entry permit holder means a person who holds a WHS entry permit;

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

work group means a work group determined under Part 5;

worker—see section 7;

workplace—see section 8.

(2) For the purposes of Part 2, a person engages in conduct with ***gross negligence*** if the conduct involves—

(a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and

(b) such a high risk of causing the death or serious injury or illness of an individual,

that the conduct merits criminal punishment for the offence.

(3) For the purposes of Part 2, a person is ***reckless*** as to the risk to an individual of death or serious injury or illness if—

(a) the person is aware of a substantial risk that death or serious injury or illness will happen; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(4) For the purposes of Part 2, the question of whether taking a risk is unjustifiable is a question of fact.

Subdivision 2—Other important terms

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

(1) For the purposes of this Act, a person conducts a business or undertaking—

(a) whether the person conducts the business or undertaking alone or with others; and

(b) whether or not the business or undertaking is conducted for profit or gain.

(2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.

(3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.

(4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.

(5) An elected member of a local authority does not in that capacity conduct a business or undertaking.

(6) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.

(7) A volunteer association does not conduct a business or undertaking for the purposes of this Act.

(8) In this section—

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

6—Meaning of *supply*

(1) A ***supply*** of a thing includes a supply and a resupply of the thing by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.

(2) A supply of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied.

(3) A supply of a thing does not include—

(a) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or

(b) a prescribed supply.

(4) A financier is taken not to supply plant, a substance or a structure for the purposes of this Act if—

(a) the financier has, in the course of the financier's business as a financier, acquired ownership of, or another right in, the plant, substance or structure on behalf of a customer of the financier; and

(b) the action by the financier, that would be a supply but for this subsection, is taken by the financier for, or on behalf of, that customer.

(5) If subsection (4) applies, the person (other than the financier) who had possession of the plant, substance or structure immediately before the financier's customer obtained possession of the plant, substance or structure is taken for the purposes of this Act to have supplied the plant, substance or structure to the financier's customer.

7—Meaning of *worker*

(1) A person is a ***worker*** if the person carries out work in any capacity for a person conducting a business or undertaking, including work as—

(a) an employee; or

(b) a contractor or subcontractor; or

(c) an employee of a contractor or subcontractor; or

(d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or

(e) an outworker; or

(f) an apprentice or trainee; or

(g) a student gaining work experience; or

(h) a volunteer; or

(i) a person of a prescribed class.

(2) For the purposes of this Act, a police officer is—

(a) a worker; and

(b) at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer.

(3) The person conducting the business or undertaking is also a ***worker*** if the person is an individual who carries out work in that business or undertaking.

8—Meaning of *workplace*

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

(2) In this section—

place includes—

(a) a vehicle, vessel, aircraft or other mobile structure; and

(b) any waters and any installation on land, on the bed of any waters or floating on any waters.

9—Examples and notes

(1) An example at the foot of a provision forms part of this Act.

(2) A note at the foot of a provision forms part of this Act.

Division 4—Application of Act

10—Act binds the Crown

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

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

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

(4) Section 7(2) of the *Crown Proceedings Act 1992* does not apply in respect of proceedings before SAET under Part 5 Division 7A.

11—Extraterritorial application

(1) It is the intention of the Parliament of the State that this Act should, so far as possible, operate to the full extent of the extraterritorial legislative power of the State.

(2) Without limiting subsection (1), this Act applies in relation to work on a South Australian ship whether or not the ship is within the coastal waters of the State.

(3) In this section—

ship includes a boat, vessel or craft;

South Australian ship means a ship—

(a) that is registered in the State; or

(b) that is owned or under charter by the Crown; or

(c) that is owned or under charter by a body corporate or other person—

(i) whose principal office or place of business is in the State; or

(ii) whose principal office or place of business with respect to the control or management of the ship is in the State.

12—Scope

(1) The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.

(2) The provisions of this Act do not limit or derogate from any civil right or remedy and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.

Division 5—SafeWork SA Advisory Committee

12A—Establishment of committee

(1) The *SafeWork SA Advisory Committee* is established.

(2) The advisory committee consists of 15 members of whom—

(a) the following will be ex officio members:

(i) the Minister;

(ii) the regulator;

(iii) the person for the time being holding, or acting in, the position of Chief Executive of the Department;

(iv) the person for the time being holding, or acting in, the position of Chief Executive Officer of RTWSA; and

(b) the following will be appointed by the Minister:

(i) the presiding member;

(ii) 4 members who, in the opinion of the Minister, are suitable to represent the interests of employees (following consultation with the United Trades and Labour Council of South Australia);

(iii) 4 members who, in the opinion of the Minister, are suitable to represent the interests of employers (following consultation with the South Australian Employer's Chamber of Commerce and Industry and other associations representing the interests of employers);

(iv) 1 member who, in the opinion of the Minister, is suitable to represent the interests of victims and their families;

(v) 1 member who, in the opinion of the Minister, is suitable to represent the interests of work health and safety professionals.

(3) Subject to subsection (4), a member of the advisory committee may appoint a suitable person to act as an alternate member and a person so appointed may, in the member's absence, act as a member of the committee.

(4) A member of the advisory committee (other than the Minister) may only appoint someone under subsection (3) with the approval of the Minister.

12B—Terms and conditions of office

(1) Subject to this section, an appointed member of the advisory committee will be appointed for a term not exceeding 3 years and will, on the expiration of a term of office, be eligible for reappointment.

(2) A member of the advisory committee is entitled to fees, allowances and expenses approved by the Governor.

(3) A member may be removed from office by the Minister if the member—

(a) becomes mentally or physically incapable of carrying out satisfactorily their functions; or

(b) is guilty of neglect of duty or dishonourable conduct; or

(c) having been appointed as an officer or employee of an organisation representing the interests of a particular class of person, ceases to be an officer or employee of that organisation.

(4) The office of an appointed member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice addressed to the Minister; or

(d) is removed from office under subsection (3).

(5) On the office of an appointed member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

12C—Functions

(1) The advisory committee has the following functions:

(a) to provide advice and recommendations on work health and safety matters to the regulator and the Minister, either on its own initiative or on request;

(b) to consider and advise on ways to improve communication, consultation and collaboration between work health and safety stakeholders;

(c) to consider and advise on compliance and education campaigns by the regulator;

(d) to make recommendations in relation to approved codes of practice;

(e) any other functions determined by the Minister or prescribed by the regulations.

(2) For the purpose of performing its functions, the advisory committee may, with the approval of the Minister—

(a) establish subcommittees (which may, but need not, consist of or include members of the advisory committee) to advise the advisory committee on any aspects of its functions, or to assist in the performance of its functions; and

(b) conduct public meetings, discussions and inquiries on questions arising before the committee,

and may do any other thing that is necessary for, or incidental to, the performance of its functions.

12D—Procedures at meetings

(1) The presiding member (or their alternate member appointed under section 12A(3)) will preside at meetings of the advisory committee or, in their absence, a member chosen by those present will preside.

(2) Subject to subsection (3), the advisory committee may act notwithstanding vacancies in its membership.

(3) Subject to subsection (4), 8 members constitute a quorum of the advisory committee and no business may be transacted at a meeting of the committee unless a quorum is present.

(4) A quorum will only be taken to be present if—

(a) at least 1 member present is a member described in section 12A(2)(b)(ii); and

(b) at least 1 member present is a member described in section 12A(2)(b)(iii).

(5) Each member present at a meeting of the advisory committee is entitled to 1 vote on a matter arising for decision at the meeting and, in the event of an equality of votes, the person presiding is entitled to a second, or casting vote.

(6) A decision carried by a majority of the votes cast by the members present at a meeting of the advisory committee is a decision of the committee.

(7) Subject to this Act, the advisory committee may determine its own procedures.

12E—Conflict of interest

A member of the advisory committee will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with employees generally or employers generally, or a substantial section of employers or employees.

12F—Confidentiality

A member of the advisory committee who, as a member of the committee, acquires information that—

(a) the member knows to be of a confidential nature; or

(b) the committee classifies as confidential information,

must not disclose the information without the approval of the Minister.

12G—Use of staff and facilities

(1) The advisory committee may, with the agreement of the Minister, make use of the services of the staff, equipment or facilities of the Department.

(2) The advisory committee may, with the agreement of a relevant agency or instrumentality, make use of the services of staff, equipment or facilities of any other agency or instrumentality of the Crown.

Part 2—Health and safety duties

Division 1—Introductory

Subdivision 1—Principles that apply to duties

13—Principles that apply to duties

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

Note—

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

14—Duties not transferrable

A duty cannot be transferred to another person.

15—Person may have more than one duty

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

16—More than one person can have a duty

(1) More than one person can concurrently have the same duty.

(2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.

(3) If more than one person has a duty for the same matter, each person—

(a) retains responsibility for the person's duty in relation to the matter; and

(b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

17—Management of risks

(1) A duty imposed on a person to ensure health and safety requires the person—

(a) to eliminate risks to health and safety, so far as is reasonably practicable; and

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

(2) A person must comply with subsection (1) to the extent to which the person has the capacity to influence and control the matter or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

Subdivision 2—What is reasonably practicable

18—What is *reasonably practicable* in ensuring health and safety

In this Act—

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

(a) the likelihood of the hazard or the risk concerned occurring; and

(b) the degree of harm that might result from the hazard or the risk; and

(c) what the person concerned knows, or ought reasonably to know, about—

(i) the hazard or the risk; and

(ii) ways of eliminating or minimising the risk; and

(d) the availability and suitability of ways to eliminate or minimise the risk; and

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

Division 2—Primary duty of care

19—Primary duty of care

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—

(a) workers engaged, or caused to be engaged by the person; and

(b) workers whose activities in carrying out work are influenced or directed by the person,

while the workers are at work in the business or undertaking.

(2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

(3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable—

(a) the provision and maintenance of a work environment without risks to health and safety; and

(b) the provision and maintenance of safe plant and structures; and

(c) the provision and maintenance of safe systems of work; and

(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, his or her own health and safety while at work.

Note—

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

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

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

Example—

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

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

(3) The designer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).

(4) The designer must give adequate information to each person who is provided with the design for the purpose of giving effect to it concerning—

(a) each purpose for which the plant, substance or structure was designed; and

(b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and

(c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or when carrying out any activity referred to in subsection (2)(a) 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

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

Example—

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

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

(3) The manufacturer must carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by subsection (2).

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

(a) each purpose for which the plant, substance or structure was designed or manufactured; and

(b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in 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

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

Example—

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

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

(3) The importer must—

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

(b) ensure that the calculations, analysis, testing or examination have been carried out.

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

(a) each purpose for which the plant, substance or structure was designed or manufactured; and

(b) the results of any calculations, analysis, testing or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and

(c) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).

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

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

(1) This section applies to a person (the ***supplier***) who conducts a business or undertaking that supplies—

(a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or

(b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or

(c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.

(2) The supplier must ensure, so far as is reasonably practicable, that the plant, substance or structure is without risks to the health and safety of persons—

(a) who, at a workplace, use the plant or substance or structure for a purpose for which it was designed or manufactured; or

(b) who handle the substance at a workplace; or

(c) who store the plant or substance at a workplace; or

(d) who construct the structure at a workplace; or

(e) who carry out any reasonably foreseeable activity at a workplace in relation to—

(i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling or disposal of the plant; or

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

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

Example—

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

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

(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).

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

Examples—

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

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

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

28—Duties of workers

While at work, a worker must—

(a) take reasonable care for his or her own health and safety; and

(b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and

(c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act; and

(d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

29—Duties of other persons at the workplace

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

(a) take reasonable care for his or her own health and safety; and

(b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and

(c) comply, so far as the person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person conducting the business or undertaking to comply with this Act.

Division 5—Offences and penalties

30—Health and safety duty

In this Division—

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

30A—Industrial manslaughter

(1) A person (being a person conducting a business or undertaking or an officer of a person conducting a business or undertaking) commits an industrial manslaughter offence if—

(a) the person has a health and safety duty; and

(b) the person engages in conduct that breaches that duty; and

(c) the conduct causes the death of an individual to whom that duty is owed; and

(d) the person—

(i) engages in the conduct with gross negligence; or

(ii) is reckless as to the risk to an individual of death or serious injury or illness.

Maximum penalty:

(a) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—20 years imprisonment;

(b) in the case of an offence committed by a body corporate—$18 000 000.

(2) For the purposes of this section, conduct causes the death of an individual if it substantially contributes to the death.

(3) If at the trial of a person for an offence against this section the trier of fact is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of a Category 1 offence, a Category 2 offence or a Category 3 offence, the trier of fact may bring a verdict that the accused is guilty of that offence if the proceedings for the offence charged commenced within the applicable limitation period for the lesser offence.

(4) To avoid doubt, an offence against this section is a major indictable offence.

31—Gross negligence or reckless conduct—Category 1

(1) A person commits a Category 1 offence if—

(a) the person has a health and safety duty; and

(b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and

(c) the person—

(i) engages in the conduct with gross negligence; or

(ii) is reckless as to the risk to an individual of death or serious injury or illness.

Maximum penalty:

(a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—$300 000 or 5 years imprisonment or both;

(b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—$600 000 or 5 years imprisonment or both;

(c) in the case of an offence committed by a body corporate—$3 000 000.

(2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.

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

A person commits a Category 2 offence if—

(a) the person has a health and safety duty; and

(b) the person fails to comply with that duty; and

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

Maximum penalty:

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

(b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—$300 000;

(c) in the case of an offence committed by a body corporate—$1 500 000.

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

A person commits a Category 3 offence if—

(a) the person has a health and safety duty; and

(b) the person fails to comply with that duty.

Maximum penalty:

(a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—$50 000;

(b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—$100 000;

(c) in the case of an offence committed by a body corporate—$500 000.

34—Exceptions

(1) To avoid doubt, an officer of a prescribed strata/community titles corporation who is a volunteer does not commit an offence for a failure to comply with a duty under section 27 (but may be liable for a failure to comply with another duty under this Act).

(2) 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.

(3) An unincorporated association does not commit an offence under this Act, and is not liable for a civil penalty under this Act, for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.

(4) However—

(a) an officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under section 27; and

(b) a member of an unincorporated association may be liable for failure to comply with a duty under section 28 or 29.

(5) In this section—

prescribed strata/community titles corporation means—

(a) a body corporate established under the *Strata Titles Act 1988* or the *Community Titles Act 1996*; or

(b) a company that holds land for the purposes of a building unit scheme consisting of 2 or more properties designed for separate occupation where the buildings comprising the scheme were erected before 22 February 1968.

Part 3—Incident notification

35—What is a *notifiable incident*

In this Act—

notifiable incident means—

(a) the death of a person; or

(b) a serious injury or illness of a person; or

(c) a dangerous incident.

36—What is a *serious injury or illness*

In this Part—

serious injury or illness of a person means an injury or illness requiring the person to have—

(a) immediate treatment as an in-patient in a hospital; or

(b) immediate treatment for—

(i) the amputation of any part of his or her body; or

(ii) a serious head injury; or

(iii) a serious eye injury; or

(iv) a serious burn; or

(v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or

(vi) a spinal injury; or

(vii) the loss of a bodily function; or

(viii) serious lacerations; or

(c) medical treatment within 48 hours of exposure to a substance,

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

37—What is a *dangerous incident*

In this Part—

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

(a) an uncontrolled escape, spillage or leakage of a substance; or

(b) an uncontrolled implosion, explosion or fire; or

(c) an uncontrolled escape of gas or steam; or

(d) an uncontrolled escape of a pressurised substance; or

(e) electric shock; or

(f) the fall or release from a height of any plant, substance or thing; or

(g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations; or

(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.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

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

(3) The notice must be given—

(a) by telephone; or

(b) in writing.

Example—

The written notice can be given by fax, email or other electronic means.

(4) A person giving notice by telephone must—

(a) give the details of the incident requested by the regulator; and

(b) if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made.

(5) A written notice must be in a form, or contain the details, approved by the regulator.

(6) If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the person conducting the business or undertaking—

(a) details of the information received; or

(b) an acknowledgement of receiving the notice.

(7) A person conducting a business or undertaking must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator under this section.

Maximum penalty:

(a) in the case of an individual—$5 000;

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

39—Duty to preserve incident sites

(1) The person with management or control of a workplace at which a notifiable incident has occurred must ensure so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

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

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

(a) to assist an injured person; or

(b) to remove a deceased person; or

(c) that is essential to make the site safe or to minimise the risk of a further notifiable incident; or

(d) that is associated with a police investigation; or

(e) for which an inspector or the regulator has given permission.

Part 4—Authorisations

40—Meaning of *authorised*

In this Part—

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

41—Requirements for authorisation of workplaces

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

(a) the regulations require the workplace or workplaces in that class of workplace to be authorised; and

(b) the workplace is not authorised in accordance with the regulations.

Maximum penalty:

(a) in the case of an individual—$50 000;

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

42—Requirements for authorisation of plant or substance

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

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

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

Maximum penalty:

(a) in the case of an individual—$20 000;

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

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

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

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

Maximum penalty:

(a) in the case of an individual—$20 000;

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

43—Requirements for authorisation of work

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

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

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

Maximum penalty:

(a) in the case of an individual—$20 000;

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

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

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

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

Maximum penalty:

(a) in the case of an individual—$20 000;

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

44—Requirements for prescribed qualifications or experience

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

(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.

Maximum penalty:

(a) in the case of an individual—$20 000;

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

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

(a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and

(b) the worker does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Maximum penalty:

(a) in the case of an individual—$20 000;

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

45—Requirement to comply with conditions of authorisation

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

Maximum penalty:

(a) in the case of an individual—$20 000;

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

Part 5—Consultation, representation and participation

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

46—Duty to consult with other duty holders

If more than one person has a duty in respect of the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter.

Maximum penalty:

(a) in the case of an individual—$20 000;

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

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.

Maximum penalty:

(a) in the case of an individual—$20 000;

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

(2) If the person conducting the business or undertaking and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures.

(3) The agreed procedures must not be inconsistent with section 48.

48—Nature of consultation

(1) Consultation under this Division requires—

(a) that relevant information about the matter is shared with workers; and

(b) that workers be given a reasonable opportunity—

(i) to express their views and to raise work health or safety issues in relation to the matter; and

(ii) to contribute to the decision-making process relating to the matter; and

(c) that the views of workers are taken into account by the person conducting the business or undertaking; and

(d) that the workers consulted are advised of the outcome of the consultation in a timely manner.

(2) If the workers are represented by a health and safety representative, the consultation must involve that representative.

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; or

(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 one 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 one or more work groups of workers.

(2) The purpose of determining a work group is to facilitate the representation of workers in the work group by one or more health and safety representatives.

(3) A work group may be determined for workers at one or more workplaces.

52—Negotiations for agreement for work group

(1) A work group is to be determined by negotiation and agreement between—

(a) the person conducting the business or undertaking; and

(b) the workers who will form the work group or their representatives.

(2) The person conducting the business or undertaking must take all reasonable steps to commence negotiations with the workers within 14 days after a request is made under section 50.

(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.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

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

53—Notice to workers

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

Maximum penalty:

(a) in the case of an individual—$2 000;

(b) in the case of a body corporate—$10 000.

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

Maximum penalty:

(a) in the case of an individual—$2 000;

(b) in the case of a body corporate—$10 000.

54—Failure of negotiations

(1) If there is a failure of negotiations (including negotiations concerning the variation of an agreement), any person who is or would be a party to the negotiations may ask the regulator to appoint an inspector for the purposes of this section.

(2) An inspector appointed under subsection (1) may decide—

(a) the matters referred to in section 52(3), or any of those matters which is the subject of the proposed variation (as the case requires); or

(b) that work groups should not be determined or that the agreement should not be varied (as the case requires).

(3) For the purposes of this section, there is a failure of negotiations if—

(a) the person conducting the business or undertaking has not taken all reasonable steps to commence negotiations with the workers and negotiations have not commenced within 14 days after—

(i) a request is made under section 50; or

(ii) a party to the agreement requests the variation of the agreement; or

(b) agreement cannot be reached on a matter relating to the determination of a work group (or the variation of an agreement concerning a work group) within a reasonable time after negotiations commence.

(4) A decision under this section is taken to be an agreement under section 52.

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 two or more persons conducting businesses or undertakings at one 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 one 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.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(3) If agreement cannot be reached on a matter relating to the determination of a work group (or a variation of an agreement) within a reasonable time after negotiations commence under this Subdivision, any party to the negotiations may ask the regulator to appoint an inspector to assist the negotiations in relation to that matter.

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

57—Notice to workers

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

Maximum penalty:

(a) in the case of an individual—$2 000;

(b) in the case of a body corporate—$10 000.

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

Maximum penalty:

(a) in the case of an individual—$2 000;

(b) in the case of a body corporate—$10 000.

58—Withdrawal from negotiations or agreement involving multiple businesses

(1) A party to a negotiation for an agreement, or to an agreement, concerning a work group under this Subdivision may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.

(2) If a party withdraws from an agreement concerning a work group under this Subdivision—

(a) the other parties must negotiate a variation to the agreement in accordance with section 56; and

(b) the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

59—Effect of Subdivision on other arrangements

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

Subdivision 4—Election of health and safety representatives

60—Eligibility to be elected

A worker is—

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

(b) not eligible to be elected as a health and safety representative if he or she is disqualified under section 65 from being a health and safety representative.

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.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

62—Eligibility to vote

(1) A health and safety representative for a work group is to be elected by members of that work group.

(2) All workers in a work group are entitled to vote for the election of a health and safety representative for that work group.

63—When election not required

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

64—Term of office of health and safety representative

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

(2) However a person ceases to hold office as a health and safety representative for a work group if—

(a) the person resigns as a health and safety representative for the work group by written notice given to the person conducting the relevant business or undertaking; or

(b) the person ceases to be a worker in the work group for which he or she was elected as a health and safety representative; or

(c) the person is disqualified under section 65 from acting as a health and safety representative; or

(d) the person is removed from that position by a majority of the members of the work group in accordance with the regulations.

(3) A health and safety representative is eligible for re-election.

65—Disqualification of health and safety representatives

(1) An application may be made to SAET to disqualify a health and safety representative on the ground that the representative has—

(a) exercised a power or performed a function as a health and safety representative for an improper purpose; or

(b) used or disclosed any information he or she acquired as a health and safety representative for a purpose other than in connection with the role of health and safety representative.

(2) The following persons may make an application under this section:

(a) any person adversely affected by—

(i) the exercise of a power or the performance of a function referred to in subsection (1)(a); or

(ii) the use or disclosure of information referred to in subsection (1)(b);

(b) the regulator.

(3) If SAET is satisfied that a ground in subsection (1) is made out, SAET may disqualify the health and safety representative for a specified period or indefinitely.

66—Immunity of health and safety representatives

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

(a) in exercising a power or performing a function under this Act; or

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

67—Deputy health and safety representatives

(1) Each deputy health and safety representative for a work group is to be elected in the same way as a health and safety representative for the work group.

(2) If the health and safety representative for a work group ceases to hold office or is unable (because of absence or any other reason) to exercise the powers or perform the functions of a health and safety representative under this Act—

(a) the powers and functions may be exercised or performed by a deputy health and safety representative for the work group; and

(b) this Act applies in relation to the deputy health and safety representative as if he or she were the health and safety representative.

(3) Sections 64, 65, 66, 72 and 73 apply to deputy health and safety representatives in the same way as they apply to health and safety representatives.

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 one or more workers that the health and safety representative represents, be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and—

(i) an inspector; or

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

(e) request the establishment of a health and safety committee; and

(f) receive information concerning the work health and safety of workers in the work group; and

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

Note—

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

(3) Despite subsection (2)(f), a health and safety representative is not entitled to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that—

(a) does not identify the worker; and

(b) could not reasonably be expected to lead to the identification of the worker.

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

69—Powers and functions generally limited to the particular work group

(1) A health and safety representative for a work group may exercise powers and perform functions under this Act only in relation to matters that affect, or may affect, workers in that group.

(2) Subsection (1) does not apply if—

(a) there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group; or

(b) a member of another work group asks for the representative's assistance,

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

(3) In this section—

another work group means another work group of workers carrying out work for a business or undertaking to which the work group that the health and safety representative represents relates.

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

70—General obligations of person conducting business or undertaking

(1) The person conducting a business or undertaking must—

(a) consult, so far as is reasonably practicable, on work health and safety matters with any health and safety representative for a work group of workers carrying out work for the business or undertaking; and

(b) confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group; and

(c) allow any health and safety representative for the work group to have access to information that the person has relating to—

(i) hazards (including associated risks) at the workplace affecting workers in the work group; and

(ii) the health and safety of the workers in the work group; and

(d) with the consent of a worker that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between the worker and—

(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 one or more workers that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and—

(i) an inspector; or

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

(f) provide any resources, facilities and assistance to a health and safety representative for the work group that are reasonably necessary or prescribed by the regulations to enable the representative to exercise his or her powers or perform his or her functions under this Act; and

(g) allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided; and

(h) permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works; and

(i) provide any other assistance to the health and safety representative for the work group that may be required by the regulations.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

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

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(3) Any time that a health and safety representative spends for the purposes of exercising his or her powers or performing his or her functions under this Act must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

71—Exceptions from obligations under section 70(1)

(1) This section applies despite section 70(1).

(2) The person conducting a business or undertaking must not allow a health and safety representative to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that—

(a) does not identify the worker; and

(b) could not reasonably be expected to lead to the identification of the worker.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(3) The person conducting a business or undertaking is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in section 70(1)(g).

(4) The person conducting a business or undertaking is not required to allow a person assisting a health and safety representative for a work group to have access to the workplace—

(a) if the assistant has had his or her WHS entry permit revoked; or

(b) during any period that the assistant's WHS entry permit is suspended or the assistant is disqualified from holding a WHS entry permit.

(5) The person conducting a business or undertaking may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group.

(6) If access is refused to a person assisting a health and safety representative under subsection (5), the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter.

72—Obligation to train health and safety representatives

(1) A health and safety representative is entitled to take at least the prescribed number of days per year off work for the purposes of attending a course of training in work health and safety that is—

(a) approved by the regulator; and

(b) a course that the health and safety representative is entitled under the regulations to attend; and

(c) subject to subsection (6), chosen by the health and safety representative, in consultation with the person conducting the relevant business or undertaking.

(2) The person conducting a business or undertaking must, at the request of 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 under subsection (1) (after undertaking the consultation referred to in subsection (1)(c)).

(3) The person conducting the business or undertaking must—

(a) as soon as practicable within the period of 3 months after the request is made, allow the health and safety representative time off work to attend the course of training; and

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

(4) If—

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

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

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

(6) 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 (3) as to the matters set out in subsections (1)(c) and (3), either party may ask the regulator to appoint an inspector to decide the matter.

(7) The inspector may decide the matter in accordance with this section.

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

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(9) For the purposes of this section, the ***prescribed number of days***, in relation to a health and safety representative, is—

(a) during the first year of the health and safety representative's term of office—5 days; and

(b) during the second year of the health and safety representative's term of office—3 days; and

(c) during the third year of the health and safety representative's term of office—2 days,

(and if the health and safety representative is re-elected at the end of a term of office then paragraphs (a), (b) and (c) will again apply during that new term of office).

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(3)(b),

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

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

74—List of health and safety representatives

(1) A person conducting a business or undertaking must ensure that—

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

(b) a copy of the up-to-date list is displayed—

(i) at the principal place of business of the business or undertaking; and

(ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups,

in a manner that is readily accessible to workers in the relevant work group or work groups.

Maximum penalty:

(a) in the case of an individual—$2 000;

(b) in the case of a body corporate—$10 000.

(2) A person conducting a business or undertaking must provide a copy of the up-to-date list prepared under subsection (1) to the regulator as soon as practicable after it is prepared.

Division 4—Health and safety committees

75—Health and safety committees

(1) The person conducting a business or undertaking at a workplace must establish a health and safety committee for the business or undertaking or part of the business or undertaking—

(a) within 2 months after being requested to do so by—

(i) a health and safety representative for a work group of workers carrying out work at that workplace; or

(ii) 5 or more workers at that workplace; or

(b) if required by the regulations to do so, within the time prescribed by the regulations.

Maximum penalty:

(a) in the case of an individual—$5 000;

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

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

Note—

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

76—Constitution of committee

(1) Subject to subsections (2) to (4), the constitution of a health and safety committee may be agreed between the person conducting the business or undertaking and the workers at the workplace.

(2) If there is a health and safety representative at a workplace, that representative, if he or she consents, is a member of the committee.

(3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose one or more of their number (who consent) to be members of the committee.

(4) At least half of the members of the committee must be workers who are not nominated by the person conducting the business or undertaking.

(5) If agreement is not reached under this section within a reasonable time, any party may ask the regulator to appoint an inspector to decide the matter.

(6) An inspector appointed on a request under subsection (5) may decide the constitution of the health and safety committee or that the committee should not be established.

(7) A decision of an inspector under this section is taken to be an agreement under this section between the parties.

77—Functions of committee

The functions of a health and safety committee are—

(a) to facilitate co-operation between the person conducting a business or undertaking and workers in instigating, developing and carrying out measures designed to ensure the workers' health and safety at work; and

(b) to assist in developing standards, rules and procedures relating to health and safety that are to be followed or complied with at the workplace; and

(c) any other functions prescribed by the regulations or agreed between the person conducting the business or undertaking and the committee.

78—Meetings of committee

A health and safety committee must meet—

(a) at least once every 3 months; and

(b) at any reasonable time at the request of at least half of the members of the committee.

79—Duties of person conducting business or undertaking

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

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(2) Any time that a member of a health and safety committee spends for the purposes set out in subsection (1) must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

(3) The person conducting a business or undertaking must allow the health and safety committee for a workplace to have access to information that the person has relating to—

(a) hazards (including associated risks) at the workplace; and

(b) the health and safety of the workers at the workplace.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(4) Despite subsection (3), the person conducting a business or undertaking must not allow the health and safety committee to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that—

(a) does not identify the worker; and

(b) could not reasonably be expected to lead to the identification of the worker.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

Division 5—Issue resolution

80—Parties to an issue

(1) In this Division—

parties, in relation to an issue, means the following:

(a) the person conducting the business or undertaking or the person's representative;

(b) if the issue involves more than one business or undertaking, the person conducting each business or undertaking or the person's representative;

(c) if the worker or workers affected by the issue are in a work group, the health and safety representative for that work group or his or her representative;

(d) if the worker or workers affected by the issue are not in a work group, the worker or workers or their representative.

(2) A person conducting a business or undertaking must ensure that the person's representative (if any) for the purposes of this Division—

(a) is not a health and safety representative; and

(b) has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.

81—Resolution of health and safety issues

(1) This section applies if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue.

(2) The parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed in the regulations.

(3) A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

82—Referral of issue to regulator for resolution by inspector

(1) This section applies if an issue has not been resolved after reasonable efforts have been made to achieve an effective resolution of the issue.

(2) A party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.

(3) A request to the regulator under this section does not prevent—

(a) a worker from exercising the right under Division 6 of this Part to cease work; or

(b) a health and safety representative from issuing a provisional improvement notice or a direction under Division 6 of this Part to cease work.

(4) On attending a workplace under this section, an inspector may exercise any of the inspector's compliance powers under this Act in relation to the workplace.

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

83—Definition of *cease work under this Division*

In this Division—

cease work under this Division means—

(a) to cease, or refuse, to carry out work under section 84; or

(b) to cease work on a direction under section 85.

84—Right of worker to cease unsafe work

A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

85—Health and safety representative may direct that unsafe work cease

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

(2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after—

(a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work; and

(b) attempting to resolve the matter as an issue under Division 5 of this Part.

Note—

Notification of a dispute to SAET under Division 7A does not affect the operation of paragraph (b).

(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 workers under this section.

(6) A health and safety representative cannot give a direction under this section unless the representative has—

(a) completed initial training prescribed by the regulations referred to in section 72(1)(b); or

(b) previously completed that training when acting as a health and safety representative for another work group; or

(c) completed training equivalent to that training under a corresponding WHS law.

85A—Reasonable concern

In determining whether or not a worker or a health and safety representative had a ***reasonable concern*** for the purposes of sections 84 and 85, the availability of dispute resolution processes under Division 7A, and whether or not a notice has been given to SAET under that Division, are not relevant considerations.

86—Worker to notify if ceases work

A worker who ceases work under this Division (otherwise than under a direction from a health and safety representative) 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 attend the workplace to assist in resolving an issue arising in relation to the cessation of work.

Note—

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

Division 7—Provisional improvement notices

90—Provisional improvement notices

(1) This section applies if a health and safety representative reasonably believes that a person—

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

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

(2) The health and safety representative may issue a provisional improvement notice requiring the person to—

(a) remedy the contravention; or

(b) prevent a likely contravention from occurring; or

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

(3) However, the health and safety representative must not issue a provisional improvement notice to a person unless he or she has first consulted the person.

(4) A health and safety representative cannot issue a provisional improvement notice unless the representative has—

(a) completed initial training prescribed by the regulations referred to in section 72(1)(b); or

(b) previously completed that training when acting as a health and safety representative for another work group; or

(c) completed training equivalent to that training under a corresponding WHS law.

(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, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.

93—Provisional improvement notice may give directions to remedy contravention

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

(2) A direction included in a provisional improvement notice may—

(a) refer to a code of practice; and

(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

94—Minor changes to provisional improvement notice

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

(a) for clarification; or

(b) to correct errors or references; or

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

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.

Maximum penalty:

(a) in the case of an individual—$5 000;

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

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

Maximum penalty:

(a) in the case of an individual—$5 000;

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

98—Formal irregularities or defects in notice

A provisional improvement notice is not invalid only because of—

(a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or

(b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person.

99—Offence to contravene a provisional improvement notice

(1) This section applies if a provisional improvement notice has been issued to a person and an inspector has not been required under section 101 to attend at the workplace.

(2) The person must comply with the provisional improvement notice within the time specified in the notice.

Maximum penalty:

(a) in the case of an individual—$50 000;

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

100—Request for review of provisional improvement notice

(1) Within 7 days after a provisional improvement notice is issued to a person—

(a) the person to whom it was issued; or

(b) if the person is a worker, the person conducting the business or undertaking at the workplace at which the worker carries out work,

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

(2) If a request is made under subsection (1), the operation of the provisional improvement notice is stayed until the inspector makes a decision on the review.

101—Regulator to appoint inspector to review notice

(1) The regulator must ensure that an inspector attends the workplace as soon as practicable after a request is made under section 100.

(2) The inspector must review the provisional improvement notice and inquire into the circumstances that are the subject of the provisional improvement notice.

(3) An inspector may review a provisional improvement notice even if the period for compliance with the notice has expired.

102—Decision of inspector on review of provisional improvement notice

(1) After reviewing the provisional improvement notice, the inspector must—

(a) confirm the provisional improvement notice; or

(b) confirm the provisional improvement notice with changes; or

(c) cancel the provisional improvement notice.

(2) The inspector must give a copy of his or her decision to—

(a) the applicant for the review of the provisional improvement notice; and

(b) the health and safety representative who issued the notice.

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

Division 7A—Work health and safety disputes

102A—Definitions for Division

In this Division—

dispute means a dispute about a WHS matter that exists between any of the following persons:

(a) a person conducting a business or undertaking;

(b) a worker affected by the WHS matter (or the personal representative of a deceased worker who was affected by the WHS matter);

(c) a health and safety representative affected by the WHS matter;

(d) a relevant union for the WHS matter;

relevant union for a WHS matter, means a union—

(a) of which a worker who works at the workplace is a member or eligible to be a member; and

(b) whose rules entitle the union to represent the worker's industrial interests;

WHS matter means any of the following matters:

(a) access to information by a health and safety representative under section 70(1)(c);

(b) a request by a health and safety representative for an assistant to have access to the workplace under section 70(1)(g);

(c) a matter about work health and safety that is an issue to which Division 5 applies;

(d) an issue about cessation of work under Division 6.

102B—Notice of dispute may be given to SAET

(1) This section applies if a dispute remains unresolved at least 24 hours after any of the parties to the dispute has, under another provision of this Part, asked the regulator to appoint an inspector to assist in resolving the dispute.

(2) A party to the dispute may give SAET written notice of the dispute.

(3) The notice must state each of the following matters:

(a) the names of the parties to the dispute;

(b) the workplace where the dispute exists;

(c) the WHS matter the subject of the dispute;

(d) if, under this Part, an inspector has been appointed to assist the parties to reach an agreement or resolve the dispute—whether a decision made by the inspector to exercise, or not to exercise, compliance powers under Part 10 is being reviewed under Part 12.

(4) On receiving the notice, SAET must publish it on a website prescribed by rules made under the *South Australian Employment Tribunal Act 2014*.

(5) If a relevant union for a worker affected by the WHS matter is not named as a party to the dispute in the notice, the union may notify SAET, in writing, that the union wants to participate in the resolution of the dispute.

(6) A relevant union that gives notice under subsection (5) is taken to be a party to the dispute for the purposes of this Division.

102C—Action for settling dispute

(1) This section applies if notice of a dispute has been given under section 102B.

(2) SAET (constituted as an industrial relations commission) may deal with the dispute in any way it thinks fit for the prompt settlement of the dispute, including—

(a) by means of mediation, conciliation or arbitration; or

(b) by making a recommendation or expressing an opinion; or

(c) if there are reasonable grounds to believe that an offence has been committed under this Act, by referring a matter to the regulator for potential investigation.

(3) Without limiting subsection (2), if SAET deals with the dispute by arbitration, SAET may make any order it considers appropriate for the prompt settlement of the dispute.

(4) A person must not contravene an order made under subsection (3).

WHS civil penalty provision.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

102D—Review of particular decisions made by inspector

(1) In dealing with the dispute, SAET (constituted as an industrial relations commission) may review a decision (a ***compliance decision***) made by an inspector to exercise, or not to exercise, compliance powers under Part 10 to assist in resolving the dispute.

(2) If SAET reviews a compliance decision under subsection (1), SAET—

(a) may decide to—

(i) confirm or vary the compliance decision; or

(ii) set aside the compliance decision and substitute another decision that SAET considers appropriate; or

(iii) set aside the compliance decision and return the matter to the inspector who made it with directions that SAET considers appropriate; and

(b) must give the regulator notice of—

(i) SAET's decision to review the compliance decision; and

(ii) any decision made by SAET under paragraph (a) (the ***review decision***).

(3) A notice mentioned in subsection (2)(b)(i) must state that any review of the compliance decision, or any stay of the operation of the compliance decision, under Part 12 ends on the making of SAET's decision to review the compliance decision under this section.

(4) Despite section 102C(3), SAET must not make an order staying the operation of the compliance decision.

(5) A compliance decision reviewed by SAET under this section is, from the time SAET decides to review the decision, taken not to be a reviewable decision under section 223.

(6) If the compliance decision is or has been the subject of review proceedings under Part 12—

(a) any review of the compliance decision, or any stay of the operation of the compliance decision, under that Part ends when SAET decides to review the compliance decision; and

(b) subsection (5) does not affect the validity of any action taken under Part 12 before the making of SAET's decision to review the compliance decision.

102E—Decision not to deal with dispute

(1) SAET (constituted as an industrial relations commission) may decide not to deal with a dispute about a WHS matter if—

(a) notice of the dispute was not given in accordance with section 102B; or

(b) SAET considers the WHS matter the subject of the dispute is frivolous, vexatious, misconceived or lacking in substance.

(2) Subsection (1) does not limit the grounds on which SAET may decide not to deal with the dispute.

(3) SAET may make a decision under subsection (1) on its own initiative.

102F—Costs

(1) A party to a dispute notified to SAET under this Division must bear the party's own costs in relation to the dispute.

(2) However, SAET may order a party (the ***first party***) to pay costs incurred by another party in relation to the dispute if SAET is satisfied—

(a) the WHS matter the subject of the dispute is frivolous, vexatious, misconceived or lacking in substance; and

(b) the first party notified the dispute to SAET or has otherwise acted without reasonable cause in relation to the dispute.

(3) If SAET orders the payment of costs, the amount ordered may be recovered in a court of competent jurisdiction as a debt.

Division 8—Part not to apply to prisoners

103—Part does not apply to prisoners

Nothing in this Part applies to a worker who is a prisoner in custody in a prison or police gaol.

Part 6—Discriminatory, coercive and misleading conduct

Division 1—Prohibition of discriminatory, coercive or misleading conduct

104—Prohibition of discriminatory conduct

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

Maximum penalty:

(a) in the case of an individual—$100 000;

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

(2) A person commits an offence under subsection (1) only if the reason referred to in section 106 was the dominant reason for the discriminatory conduct.

Note—

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

105—What is *discriminatory conduct*

(1) For the purposes of this Part, a person engages in ***discriminatory conduct*** if—

(a) the person—

(i) dismisses a worker; or

(ii) terminates a contract for services with a worker; or

(iii) puts a worker to his or her detriment in the engagement of the worker; or

(iv) alters the position of a worker to the worker's detriment; or

(b) the person—

(i) refuses or fails to offer to engage a prospective worker; or

(ii) treats a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement; or

(c) the person terminates a commercial arrangement with another person; or

(d) the person refuses or fails to enter into a commercial arrangement with another person.

(2) For the purposes of this Part, a person also engages in discriminatory conduct if the person organises to take any action referred to in subsection (1) or threatens to organise or take that action.

106—What is a *prohibited reason*

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

(a) is, has been or proposes to be a health and safety representative or a member of a health and safety committee; or

(b) undertakes, has undertaken or proposes to undertake another role under this Act; or

(c) exercises a power or performs a function or has exercised a power or performed a function or proposes to exercise a power or perform a function as a health and safety representative or as a member of a health and safety committee; or

(d) exercises, has exercised or proposes to exercise a power under this Act or exercises, has exercised or proposes to exercise a power under this Act in a particular way; or

(e) performs, has performed or proposes to perform a function under this Act or performs, has performed or proposes to perform a function under this Act in a particular way; or

(f) refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act or refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under this Act in a particular way; or

(g) assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person exercising a power or performing a function under this Act; or

(h) raises or has raised or proposes to raise an issue or concern about work health and safety with—

(i) the person conducting a business or undertaking; or

(ii) an inspector; or

(iii) a WHS entry permit holder; or

(iv) a health and safety representative; or

(v) a member of a health and safety committee; or

(vi) another worker; or

(vii) any other person who has a duty under this Act in relation to the matter; or

(viii) any other person exercising a power or performing a function under this Act; or

(i) is involved in, has been involved in or proposes to be involved in resolving a work health and safety issue under this Act; or

(j) is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under this Act.

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.

Maximum penalty:

(a) in the case of an individual—$100 000;

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

Note—

Civil proceedings may be brought under Division 3 of this Part if a person requested, instructed, induced, encouraged, authorised or 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.

Maximum penalty:

(a) in the case of an individual—$100 000;

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

Note—

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

(2) In this section, a reference to taking action or threatening to take action against a person includes a reference to not taking a particular action or threatening not to take a particular action in relation to that person.

(3) To avoid doubt, a reasonable direction given by an emergency services worker in an emergency is not an action with intent to coerce or induce a person.

109—Misrepresentation

(1) A person must not knowingly or recklessly make a false or misleading representation to another person about that other person's—

(a) rights or obligations under this Act; or

(b) ability to initiate, or participate in, a process or proceedings under this Act; or

(c) ability to make a complaint or inquiry to a person or body empowered under this Act to seek compliance with this Act.

Maximum penalty:

(a) in the case of an individual—$100 000;

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

(2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.

Division 2—Criminal proceedings in relation to discriminatory conduct

110—Proof of discriminatory conduct

(1) This section applies if in proceedings for an offence of contravening section 104 or 107, the prosecution—

(a) proves that the discriminatory conduct was engaged in; and

(b) proves that a circumstance referred to in section 106(a) to (j) existed at the time the discriminatory conduct was engaged in.

(2) If it is alleged that the discriminatory conduct was engaged in for a prohibited reason, that reason is presumed to be the dominant reason for that conduct unless the accused proves, on the balance of probabilities, that the reason was not the dominant reason for the conduct.

(3) To avoid doubt, the burden of proof on the accused under subsection (2) is a legal burden of proof.

111—Order for compensation or reinstatement

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

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

(b) in relation to a person who was or is an employee or prospective employee, an order that—

(i) the person be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or

(ii) the person be employed in the position for which he or she had applied or a similar position.

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 SAET for an order under this section.

(2) SAET may make one 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 SAET may make are—

(a) an injunction; or

(b) in the case of conduct referred to in subsection (2)(a) or (b), an order that the person pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that SAET considers appropriate; or

(c) in the case of conduct referred to in subsection (2)(a) in relation to a worker who was or is an employee or prospective employee, an order that—

(i) the worker be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or

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

(d) any other order that SAET 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 SAET.

(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 SAET 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 a court makes an order under section 111 in a proceeding for an offence under section 104 or 107, SAET cannot make an order under section 112 in a proceeding in relation to conduct referred to in section 112(2)(a) or (b) that is the same conduct.

115—Prohibition of multiple actions

A person cannot—

(a) commence a proceeding under Division 3 of this Part if the person has commenced a proceeding or made an application or complaint in relation to the same matter under a law of the Commonwealth or a State and that proceeding, application or complaint has not been withdrawn; or

(b) recover any compensation under Division 3 of this Part if the person has received compensation for the matter under a law of the Commonwealth or a State; or

(c) commence or continue an application under Division 3 of this Part if the person has failed in a proceeding, application or complaint in relation to the same matter under a law of the Commonwealth or a State, other than a proceeding, application or complaint relating to workers' compensation.

Part 7—Workplace entry by WHS entry permit holders

Note—

Division 7 of Part 13 sets out the procedure in relation to the bringing of proceedings in relation to WHS civil penalty provisions.

Division 1—Introductory

116—Definitions

In this Part—

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

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

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

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

(a) who is a member, or eligible to be a member, of a relevant union; and

(b) whose industrial interests the relevant union is entitled to represent; and

(c) who works at that workplace.

Division 2—Entry to inquire into suspected contraventions

117—Entry to inquire into suspected contraventions

(1) A WHS entry permit holder may enter a workplace for the purpose of inquiring into a suspected contravention of this Act that relates to, or affects, a relevant worker.

(2) The WHS entry permit holder must reasonably suspect before entering the workplace that the contravention has occurred or is continuing and involves a risk to the health or safety of a relevant worker.

(3) Furthermore, a WHS entry permit holder must—

(a) give consideration as to whether it is reasonably practicable to give notice to the regulator about the proposed entry before exercising a power under subsection (1) in order to provide an opportunity for an inspector to attend at the workplace at the time of entry; and

(b) if it is reasonably practicable to give notice to the regulator about the proposed entry, comply with any requirement prescribed by the regulations in relation to giving such a notice under this section.

(4) The regulator must establish and maintain a policy that relates to the circumstances when inspectors will attend at workplaces when notified of the proposed entry of WHS entry permit holders under this section.

(5) The regulator must ensure that the policy is published on a website that is maintained or used by the Department and the Minister must cause a copy of the policy to be laid before both Houses of Parliament.

(6) If a WHS entry permit holder exercises a power of entry under this section without being accompanied by an inspector who has attended at the workplace in accordance with a policy under subsection (4)—

(a) the WHS entry permit holder may furnish a report on the outcome of his or her inquiries at the workplace to the regulator in accordance with the regulations; and

(b) on the receipt of a report under paragraph (a), the regulator must—

(i) give consideration to what action (if any) should be taken on account of any suspected contravention of this Act outlined in the report; and

(ii) if any such action is taken—advise the WHS entry permit holder of the action taken.

118—Rights that may be exercised while at workplace

(1) While at the workplace under this Division, the WHS entry permit holder may do all or any of the following in relation to the suspected contravention of this Act:

(a) inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention;

(ab) during the inspection—

(i) take measurements or conduct tests directly relevant to the suspected contravention; and

(ii) take photos and videos directly relevant to the suspected contravention;

(b) consult with the relevant workers in relation to the suspected contravention;

(c) consult with the relevant person conducting a business or undertaking about the suspected contravention;

(d) require the relevant person conducting a business or undertaking to allow the WHS entry permit holder to inspect, and make copies of, any document that is directly relevant to the suspected contravention and that—

(i) is kept at the workplace; or

(ii) is accessible from a computer that is kept at the workplace;

(e) warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or her health or safety emanating from an immediate or imminent exposure to a hazard, of that risk.

(1a) In taking measurements and conducting tests under subsection (1)(ab), the WHS entry permit holder—

(a) may bring to the workplace and use equipment and materials that are reasonably necessary for the measurements or tests; and

(b) must take account of the need to take the measurements and conduct the tests in compliance with this Act and other relevant laws.

(1b) Despite subsection (1)(ab)—

(a) insofar as is reasonably practicable, a photo or video must not be taken that records the image or voice of a person other than—

(i) a relevant worker; or

(ii) a worker at the workplace whose actions are directly affecting a relevant worker; or

(iii) an inspector or emergency services worker attending the workplace; or

(iv) a WHS entry permit holder attending the workplace; and

(b) a photo or video must not be live streamed.

(1c) Nothing in this section prevents a photo or video being taken for the purpose of documenting a person hindering or obstructing another person in contravention of this Part.

(2) Despite subsection (1)—

(a) the right of a WHS entry permit holder to require copies of a document under subsection (1)(d) is subject to any direction that may be given by an inspector (which may include a direction that copies of a document not be required to be made and provided to the WHS entry permit holder); and

(b) the relevant person conducting the business or undertaking is not required under subsection (1)(d) to allow the WHS entry permit holder to inspect or make copies of a document if to do so would contravene a law of the Commonwealth or a law of a State.

Note—

See also section 148 and the *Privacy Act 1988* of the Commonwealth in relation to limits on the disclosure and use of information collected under this section.

(3) A relevant person conducting a business or undertaking must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1)(d).

WHS civil penalty provision.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(4) Subsection (3) places an evidential burden on the defendant to show a reasonable excuse.

119—Notice of entry

(1) A WHS entry permit holder must, as soon as is reasonably practicable after entering a workplace under this Division, give notice of the entry and the suspected contravention, in accordance with the regulations, to—

(a) the relevant person conducting a business or undertaking; and

(b) the person with management or control of the workplace.

(2) Subsection (1) does not apply if to give the notice would—

(a) defeat the purpose of the entry to the workplace; or

(b) unreasonably delay the WHS entry permit holder in an urgent case.

(3) Subsection (1) does not apply to an entry to a workplace under this Division to inspect or make copies of documents referred to in section 120.

120—Entry to inspect employee records or information held by another person

(1) This section applies if a WHS entry permit holder is entitled under section 117 to enter a workplace to inquire into a suspected contravention of this Act.

(2) For the purposes of the inquiry into the suspected contravention, the WHS entry permit holder may enter any workplace for the purpose of inspecting, or making copies of—

(a) employee records that are directly relevant to a suspected contravention; or

(b) other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting a business or undertaking.

(3) Before doing so, the WHS entry permit holder must give notice of the proposed entry to the person from whom the documents are requested and the relevant person conducting a business or undertaking.

(4) The notice must comply with the regulations.

(5) The notice must be given during usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

(6) However, the right of a WHS entry permit holder to require copies of a document under this section is subject to any direction that may be given by an inspector (which may include a direction that copies of a document not be required to be made and provided to the WHS entry permit holder).

Division 3—Entry to consult and advise workers

121—Entry to consult and advise workers

(1) A WHS entry permit holder may enter a workplace to consult on work health and safety matters with, and provide advice on those matters to, one or more relevant workers who wish to participate in the discussions.

(2) A WHS entry permit holder may, after entering a workplace under this Division, warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or her health or safety, emanating from an immediate or imminent exposure to a hazard, of that risk.

122—Notice of entry

(1) Before entering a workplace under this Division, a WHS entry permit holder must give notice of the proposed entry to the relevant person conducting a business or undertaking.

(2) The notice must comply with the regulations.

(3) The notice must be given during the usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.

Division 4—Requirements for WHS entry permit holders

123—Contravening WHS entry permit conditions

A WHS entry permit holder must not contravene a condition imposed on the WHS entry permit.

WHS civil penalty provision.

Maximum penalty: $20 000.

124—WHS entry permit holder must also hold permit under other law

(1) A WHS entry permit holder must not enter a workplace unless he or she also holds an entry permit under the Fair Work Act or under the *Fair Work Act 1994*.

WHS civil penalty provision.

Maximum penalty: $10 000.

(2) A person who has a right of entry to a workplace under section 140 of the *Fair Work Act 1994* will be taken to hold an entry permit under that Act for the purposes of subsection (1).

125—WHS entry permit to be available for inspection

A WHS entry permit holder must, at all times that he or she is at a workplace under a right of entry under Division 2 or 3 of this Part, have his or her WHS entry permit and photographic identification available for inspection by any person on request.

WHS civil penalty provision.

Maximum penalty: $10 000.

126—When right may be exercised

A WHS entry permit holder may exercise a right under Division 2 or 3 of this Part only during the usual working hours at the workplace.

WHS civil penalty provision.

Maximum penalty: $10 000.

127—Where the right may be exercised

A WHS entry permit holder may exercise a right of entry to a workplace only in relation to—

(a) the area of the workplace where the relevant workers work; or

(b) any other work area that directly affects the health or safety of those workers.

128—Work health and safety requirements

A WHS entry permit holder must not exercise a right of entry to a workplace under Division 2 or 3 of this Part unless he or she complies with any reasonable request by the relevant person conducting a business or undertaking or the person with management or control of the workplace to comply with—

(a) any work health and safety requirement that applies to the workplace; and

(b) any other legislated requirement that applies to that type of workplace.

WHS civil penalty provision.

Maximum penalty: $10 000.

129—Residential premises

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

WHS civil penalty provision.

Maximum penalty: $10 000.

130—WHS entry permit holder not required to disclose names of workers

(1) A WHS entry permit holder is not required to disclose to the relevant person conducting a business or undertaking or the person with management or control of the workplace the name of any worker at the workplace.

(2) A WHS entry permit holder who wishes to disclose to the relevant person conducting a business or undertaking or the person with management or control of the workplace the name of any worker may only do so with the consent of the worker.

Division 5—WHS entry permits

131—Application for WHS entry permit

(1) A union may apply to the authorising authority for the issue of a WHS entry permit to a person who is an official of the union.

(2) The application must specify the person who is to hold the WHS entry permit and include a statutory declaration by that person declaring that he or she—

(a) is an official of the union; and

(b) has satisfactorily completed the prescribed training; and

(c) holds, or will hold, an entry permit under—

(i) the Fair Work Act; or

(ii) the *Fair Work Act 1994*.

(3) For the purposes of subsection (2)(c)(ii), a person who has a right of entry to a workplace under section 140 of the *Fair Work Act 1994* will be taken to hold an entry permit under that Act.

132—Consideration of application

In considering whether to issue a WHS entry permit, the authorising authority must take into account—

(a) the object of this Act; and

(b) the object of allowing union right of entry to workplaces for work health and safety purposes.

133—Eligibility criteria

(1) The authorising authority must not issue a WHS entry permit to an official of a union unless the authorising authority is satisfied that the official—

(a) is an official of the union; and

(b) has satisfactorily completed the prescribed training; and

(c) holds, or will hold, an entry permit under—

(i) the Fair Work Act; or

(ii) the *Fair Work Act 1994*.

(2) For the purposes of subsection (1)(c)(ii), a person who has a right of entry to a workplace under section 140 of the *Fair Work Act 1994* will be taken to hold an entry permit under that Act.

134—Issue of WHS entry permit

The authorising authority may issue a WHS entry permit to a person if the authorising authority has taken into account the matters in section 132 and is satisfied about the matters in section 133.

135—Conditions on WHS entry permit

The authorising authority may impose conditions on a WHS entry permit.

136—Term of WHS entry permit

A WHS entry permit has effect for a term of 3 years from the date it is issued.

137—Expiry of WHS entry permit

(1) Unless it is earlier revoked, a WHS entry permit expires at the first of the following to occur:

(a) at the end of the term of the WHS entry permit;

(b) at the end of the term of the entry permit held by the WHS entry permit holder under—

(i) the Fair Work Act; or

(ii) the *Fair Work Act 1994* (being when the relevant person ceases to have a right of entry under section 140 of that Act);

(c) when the permit holder ceases to be an official of the union that applied for the permit;

(d) the union that applied for the permit ceases to be—

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

(ii) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under the *Fair Work Act 1994*.

(2) An application may be made for the issue of a subsequent WHS entry permit before or after the current WHS entry permit expires.

138—Application to revoke WHS entry permit

(1) The following persons may apply to the authorising authority for a WHS entry permit held by a person to be revoked:

(a) the regulator;

(b) the relevant person conducting a business or undertaking;

(c) any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise a right under this Part;

(d) any other person affected by the exercise or purported exercise of a right under this Part by a WHS entry permit holder.

(2) The grounds for an application for revocation of a WHS entry permit are—

(a) that the permit holder no longer satisfies the eligibility criteria for a WHS entry permit or an entry permit under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* of the Commonwealth, or is no longer eligible to exercise a right of entry under section 140 of the *Fair Work Act 1994*; or

(b) that the permit holder has contravened any condition of the WHS entry permit; or

(c) that the permit holder has acted or purported to act in an improper manner in the exercise of any right under this Act; or

(d) in exercising or purporting to exercise a right under this Part, that the permit holder has intentionally hindered or obstructed a person conducting the business or undertaking or workers at a workplace.

(3) The applicant must give written notice of the application, setting out the grounds for the application, to the person who holds the WHS entry permit and the union concerned.

(4) The person who holds the WHS entry permit and the union that the WHS entry permit holder represents are parties to the application.

139—Authorising authority must permit WHS entry permit holder to show cause

(1) If, on an application under section 138, the authorising authority is satisfied that a ground may exist for the revocation of the WHS entry permit under section 138(2), the authorising authority must—

(a) give the WHS entry permit holder written notice (a ***show cause notice***); and

(b) if the authorising authority considers it appropriate, suspend the operation of the WHS entry permit until the authorising authority decides the application for revocation.

(2) The show cause notice must—

(a) contain a statement to the effect that the WHS entry permit holder may, not later than 21 days after the day the WHS entry permit holder is given the notice, give the authorising authority written reasons explaining why the WHS entry permit should not be revoked; and

(b) be accompanied by a summary of the reasons for the application; and

(c) if applicable, be accompanied by a notice of suspension of the permit.

140—Determination of application

(1) If the authorising authority is satisfied on the balance of probabilities about any of the matters in section 138(2), it may make one or more of the following orders:

(a) an order imposing conditions on the WHS entry permit;

(b) an order suspending the WHS entry permit;

(c) an order revoking the WHS entry permit;

(d) an order about the future issue of a WHS entry permit to the person whose WHS entry permit is revoked;

(e) an order imposing any alternative action the authorising authority considers appropriate.

(2) In deciding what action to take under subsection (1), in relation to a person, the authorising authority must take into account—

(a) the seriousness of any findings of the authorising authority having regard to the object of this Act; and

(b) any other matters the authority considers relevant.

Division 6—Dealing with disputes

141—Application for assistance of inspector to resolve dispute

If a dispute arises about the exercise or purported exercise by a WHS entry permit holder of a right of entry under this Act, any party to the dispute may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the dispute.

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

(1) The authorising authority may deal with a dispute about the exercise or purported exercise by a WHS entry permit holder of a right of entry under this Act (including a dispute about whether a request under section 128 is reasonable).

(2) The authorising authority may deal with the dispute in any manner it thinks fit, including by means of mediation, conciliation or arbitration.

(3) If the authorising authority deals with the dispute by arbitration, it may make one or more of the following orders:

(a) an order imposing conditions on a WHS entry permit;

(b) an order suspending a WHS entry permit;

(c) an order revoking a WHS entry permit;

(d) an order about the future issue of WHS entry permits to one or more persons;

(e) any other order it considers appropriate.

(4) The authorising authority may deal with the dispute—

(a) on its own initiative; or

(b) on application by any of the following to whom the dispute relates:

(i) a WHS entry permit holder;

(ii) the relevant union;

(iii) the relevant person conducting a business or undertaking;

(iv) any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise the right of entry;

(v) any other person affected by the exercise or purported exercise of the right of entry by a WHS entry permit holder;

(vi) the regulator.

(5) In dealing with a dispute, the authorising authority must not confer any rights on the WHS entry permit holder that are additional to, or inconsistent with, rights exercisable by the WHS entry permit holder under this Part.

143—Contravening order made to deal with dispute

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

WHS civil penalty provision.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

Note—

In relation to liability of a body corporate see also sections 244 and 256.

Division 7—Prohibitions

144—Person must not refuse or delay entry of WHS entry permit holder

(1) A person must not, without reasonable excuse, refuse or unduly delay entry into a workplace by a WHS entry permit holder who is entitled to enter the workplace under this Part.

WHS civil penalty provision.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

145—Person must not hinder or obstruct WHS entry permit holder

A person must not intentionally and unreasonably hinder or obstruct a WHS entry permit holder in entering a workplace or in exercising any rights at a workplace in accordance with this Part.

WHS civil penalty provision.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

146—WHS entry permit holder must not delay, hinder or obstruct any person or disrupt work at workplace

A WHS entry permit holder exercising, or seeking to exercise, rights in accordance with this Part must not intentionally and unreasonably delay, hinder or obstruct any person or disrupt any work at a workplace, or otherwise act in an improper manner.

WHS civil penalty provision.

Maximum penalty: $10 000.

147—Misrepresentations about things authorised by this Part

(1) A person must not take action—

(a) with the intention of giving the impression; or

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

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

WHS civil penalty provision.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

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

148—Unauthorised use or disclosure of information or documents

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

(a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent—

(i) a serious risk to a person's health or safety; or

(ii) a serious threat to public health or safety; or

(b) the person has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the information or document as a necessary part of an investigation of the matter or in reporting concerns to relevant persons or authorities; or

(c) the use or disclosure is required or authorised by or under law; or

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

(i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;

(ii) the enforcement of laws relating to the confiscation of the proceeds of crime;

(iii) the protection of the public revenue;

(iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;

(v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or

(e) if the information is, or the document contains, personal information—the use or disclosure is made with the consent of the individual to whom the information relates.

WHS civil penalty provision.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

Division 8—General

149—Return of WHS entry permits

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

(a) the permit is revoked or suspended;

(b) the permit expires.

WHS civil penalty provision.

Maximum penalty: $2 000.

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

(a) the person, or the person's union, applies to the authorising authority for the return of the permit; and

(b) the permit has not expired.

150—Union to provide information to authorising authority

The relevant union must advise the authorising authority if—

(a) the WHS entry permit holder resigns from or otherwise leaves the union; or

(b) the WHS entry permit holder has had any entry permit granted under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* of the Commonwealth, (no matter when in force) cancelled or suspended or if the holder is no longer eligible to exercise a right of entry under section 140 of the *Fair Work Act 1994*; or

(c) the union ceases to be—

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

(ii) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under the *Fair Work Act 1994*.

WHS civil penalty provision.

Maximum penalty:

(a) in the case of an individual—$5 000;

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

151—Register of WHS entry permit holders

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

Part 8—The regulator

Division 1—Functions of regulator

152—Functions of regulator

The regulator has the following functions:

(a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;

(b) to monitor and enforce compliance with this Act;

(c) to provide advice and information on work health and safety to duty holders under this Act and to the community;

(d) to collect, analyse and publish statistics relating to work health and safety;

(e) to foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters;

(f) to promote and support education and training on matters relating to work health and safety;

(g) to engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator;

(h) to conduct and defend proceedings under this Act before a court or tribunal;

(i) any other function conferred on the regulator by this or any other Act.

152A—Right of regulator to intervene in proceedings

(1) The regulator is entitled to intervene in any proceedings before SAET under this Act.

(2) If the regulator has intervened in proceedings, another party to the proceedings cannot be ordered to pay costs incurred by the regulator as a result of that intervention.

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 body or person (including a person for the time being holding or acting in a specified office or position) a power or function under this Act.

(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.

(3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

Division 2—Powers of regulator to obtain information

155—Powers of regulator to obtain information

(1) This section applies if the regulator has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Act or that will assist the regulator to monitor or enforce compliance with this Act.

(2) The regulator may, by written notice served on the person, require the person to do one or more of the following:

(a) to give the regulator, in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, that information of which the person has knowledge;

(b) to produce to the regulator, in accordance with the notice, those documents;

(c) to appear before a person appointed by the regulator on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.

(3) The notice must—

(a) state that the requirement is made under this section; and

(b) contain a statement to the effect that a failure to comply with a requirement is an offence; and

(c) if the notice requires the person to provide information or documents or answer questions—

(i) contain a statement about the effect of sections 172 and 269; and

(ii) state that the person may attend with a legal practitioner.

(4) The regulator must not make a requirement under subsection (2)(c) unless the regulator has taken all reasonable steps to obtain the information under subsection (2)(a) and (b) and has been unable to do so.

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

Maximum penalty:

(a) in the case of an individual—$10 000;

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

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

(7) Section 172 (with any necessary changes) applies to a requirement under this section.

Part 9—Securing compliance

Division 1—Appointment of inspectors

156—Appointment of inspectors

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

(a) a public sector employee under the *Public Sector Act 2009*;

(b) the holder of a statutory office;

(c) a person who is appointed as an inspector or authorised officer under a corresponding WHS law;

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

(2) Without limiting subsection (1), the following persons will be taken to have been appointed as inspectors:

(a) in relation to mines to which the *Mines and Works Inspection Act 1920* applies—an inspector of mines under that Act;

(b) in relation to operations to which the *Offshore Minerals Act 2000* applies—an inspector under that Act;

(c) in relation to operations to which the *Petroleum and Geothermal Energy Act 2000* applies—an authorised officer under that Act;

(d) in relation to operations to which the *Petroleum (Submerged Lands) Act 1982* applies—an inspector under that Act;

(e) any other person who may exercise statutory powers under another Act brought within the ambit of this subsection by the regulations.

157—Identity cards

(1) The regulator must give each inspector an identity card that states the person's name and appointment as an inspector and includes any other matter prescribed by the regulations.

(2) An inspector must produce his or her identity card for inspection on request when exercising compliance powers.

(3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the regulator as soon as practicable.

158—Accountability of inspectors

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

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

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; and

(iii) issues related to the exercise or purported exercise of a right of entry under Part 7;

(c) to review disputed provisional improvement notices;

(d) to require compliance with this Act through the issuing of notices;

(e) to investigate contraventions of this Act and assist in the prosecution of offences;

(f) other functions or powers conferred by the regulations.

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.

(4) An inspector may enter any place if the entry is authorised by a search warrant.

Note—

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

164—Notification of entry

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

(2) An inspector must, as soon as practicable after entry to a workplace or suspected workplace, take all reasonable steps to notify the following persons of the entry and the purpose of the entry:

(a) the relevant person conducting a business or undertaking at the workplace;

(b) the person with management or control of the workplace;

(c) any health and safety representative for workers carrying out work for that business or undertaking at the workplace.

(3) However, an inspector is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.

(4) In this section—

relevant person conducting a business or undertaking means the person conducting any business or undertaking in relation to which the inspector is exercising the powers of entry.

165—General powers on entry

(1) An inspector who enters a workplace under section 163 may do all or any of the following:

(a) inspect, examine and make inquiries at the workplace;

(b) inspect and examine anything (including a document) at the workplace;

(c) bring to the workplace and use any equipment or materials that may be required;

(d) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);

(e) take and remove for analysis a sample of any substance or thing 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, without reasonable excuse, refuse or fail to comply with the requirement.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(3) Subsection (2) places an evidential burden on the accused to show a reasonable excuse.

166—Persons assisting inspectors

(1) A person (the ***assistant***), including an interpreter, may accompany the inspector entering a workplace under section 163 to assist the inspector if the inspector considers the assistance is necessary.

(2) The assistant—

(a) may do the things at the place and in the manner that the inspector reasonably requires to assist the inspector to exercise compliance powers; but

(b) must not do anything that the inspector does not have power to do, except as permitted under a search warrant.

(3) Anything done lawfully by the assistant is taken for all purposes to have been done by the inspector.

Subdivision 2—Search warrants

167—Search warrants

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

(2) Subject to subsection (6), the application must be sworn and state the grounds on which the warrant is sought.

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

Example—

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

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

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

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

(5) Subject to subsection (6), the search warrant must state—

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

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

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

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

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

(6) An inspector may apply to a magistrate for a search warrant by telephone, fax or other prescribed means if the inspector considers the urgency of the situation requires it and, in such a case, the following provisions will apply:

(a) the magistrate may complete and sign the warrant without the provision of sworn evidence and without a written application that states the grounds on which the warrant is sought if the magistrate is satisfied that there are reasonable grounds for issuing the warrant urgently;

(b) if the magistrate completes and signs a warrant under paragraph (a), the magistrate must then tell the inspector—

(i) the terms of the warrant (as contemplated by subsection (5)); and

(ii) the date on which, and the time at which, the warrant was signed;

(c) if steps are taken under paragraph (b), the inspector must then—

(i) complete a form of warrant in the same terms as the warrant signed by the magistrate and write on the form—

(A) the name of the magistrate; and

(B) the date on which, and the time at which, the warrant was signed; and

(ii) send the magistrate the completed form of warrant not later than the day after the warrant is executed or comes to an end;

(d) a form of warrant completed by an inspector under paragraph (c) has the same force and effect as a warrant issued by the magistrate under subsections (4) and (5).

168—Announcement before entry on warrant

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

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

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

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

(a) the safety of any person; or

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

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

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

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

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

Subdivision 3—Limitation on entry powers

170—Places used for residential purposes

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

(a) with the consent of the person with management or control of the place; or

(b) under the authority conferred by a search warrant; or

(c) for the purpose only of gaining access to a suspected workplace, but only—

(i) if the inspector reasonably believes that no reasonable alternative access is available; and

(ii) at a reasonable time having regard to the times at which the inspector believes work is being carried out at the place to which access is sought.

Subdivision 4—Specific powers on entry

171—Power to require production of documents and answers to questions

(1) An inspector who enters a workplace under this Division may—

(a) require a person to tell the inspector who has custody of, or access to, a document; or

(b) require a person who has custody of, or access to, a document to produce that document to the inspector while the inspector is at that workplace or within a specified period; or

(c) require a person at the workplace to answer any questions put by the inspector, subject to the operation of section 172.

(2) A requirement under subsection (1)(b) must be made by written notice unless the circumstances require the inspector to have immediate access to the document.

(3) An interview conducted by an inspector under subsection (1)(c) must be conducted in private if—

(a) the inspector considers it appropriate; or

(b) the person being interviewed so requests.

(4) Subsection (3) does not limit the operation of section 166 or prevent a representative of the person being interviewed from being present at the interview.

(5) Subsection (3) may be invoked during an interview by—

(a) the inspector; or

(b) the person being interviewed,

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

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

Maximum penalty:

(a) in the case of an individual—$10 000;

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

Note—

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

(7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

172—Protection against self-incrimination

An individual is 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 that individual or expose that individual to a penalty.

173—Warning to be given

(1) Before requiring a person to answer a question or provide information or a document under this Part, an inspector must—

(a) identify himself or herself to the person as an inspector by producing the inspector's identity card or in some other way; and

(b) warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and

(c) advise the person about the effect of section 172; and

(d) advise the person about the effect of section 269.

(2) 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 of, or take extracts from, a document given to the inspector in accordance with a requirement under this Act; and

(b) keep that document for the period that the inspector considers necessary.

(2) While an inspector retains custody of a document, the inspector must permit the following persons to inspect or make copies of the document at all reasonable times:

(a) the person who produced the document;

(b) the owner of the document;

(c) a person authorised by a person referred to in paragraph (a) or (b).

175—Power to seize evidence etc

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

(2) An inspector who enters a place with a search warrant may seize the evidence for which the warrant was issued.

(3) An inspector may also seize anything else at the place if the inspector reasonably believes—

(a) the thing is evidence of an offence against this Act; and

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

176—Inspector's power to seize dangerous workplaces and things

(1) This section applies if an inspector who enters a workplace under this Part reasonably believes that—

(a) the workplace or part of the workplace; or

(b) plant at the workplace; or

(c) a substance at the workplace or part of the workplace; or

(d) a structure at a workplace,

is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

(2) The inspector may seize the workplace or part, the plant, the substance or the structure.

177—Powers supporting seizure

(1) Having seized a thing, an inspector may—

(a) move the thing from the place where it was seized (the ***place of seizure***); or

(b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or

Examples—

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

2 Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

(c) if the thing is plant or a structure—dismantle or cause to be dismantled the plant or structure.

(2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(3) To enable a thing to be seized, an inspector may require the person in control of it—

(a) to take it to a stated reasonable place by a stated reasonable time; and

(b) if necessary, to remain in control of it at the stated place for a reasonable time.

(4) The requirement—

(a) must be made by written notice; or

(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

(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).

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

178—Receipt for seized things

(1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by this section (given the thing's nature, condition and value).

179—Forfeiture of seized things

(1) A seized thing is forfeited to the 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 in a court of competent jurisdiction as a debt due to the State from that person.

(9) In this section—

person entitled to a thing means the person from whom it was seized unless that person is not entitled to possess it in which case it means the owner of the thing.

180—Return of seized things

(1) If a seized thing has not been forfeited, the person entitled to the thing may apply to the regulator for the return of the thing after the end of 6 months after it was seized.

(2) The regulator must return the thing to the applicant under subsection (1) unless the regulator has reasonable grounds to retain the thing.

(3) The regulator may impose any conditions on the return of the thing under this section that the regulator considers appropriate to eliminate or minimise any risk to work health or safety related to the thing.

(4) In this section—

person entitled to a thing means the person entitled to possess the thing or the owner of the thing.

181—Access to seized things

(1) Until a seized thing is forfeited or returned, the regulator must permit the following persons to inspect it and, if it is a document, to make copies of it at all reasonable times:

(a) the person from whom the thing was seized;

(b) the owner of the thing;

(c) a person authorised by a person referred to in paragraph (a) or (b).

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow inspection or copying.

Division 4—Damage and compensation

182—Damage etc to be minimised

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

183—Inspector to give notice of damage

(1) This section applies if an inspector or an assistant to an inspector damages a thing when exercising or purporting to exercise a compliance power.

(2) The inspector must, as soon as practicable, give written notice of the damage to the person who the inspector believes on reasonable grounds, is the person in control of the thing.

(3) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the inspector's or assistant's control, the inspector may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the inspector reasonably believes is trivial.

184—Compensation

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under Division 3 of this Part.

(2) Compensation may be claimed and ordered in a proceeding—

(a) brought in a court of competent jurisdiction; or

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

(3) The court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Division 5—Other matters

185—Power to require name and address

(1) An inspector may require a person to provide the person's name and residential address if—

(a) the inspector finds the person committing an offence against this Act; or

(b) the inspector finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed an offence against this Act; 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 his or her name and residential address, the inspector must—

(a) tell the person the reason for the requirement to provide his or her name and residential address; and

(b) warn the person that it is an offence to fail to state that name and residential address, unless the person has a reasonable excuse.

(3) If the inspector reasonably believes that the name or residential address is false, the inspector may require the person to give evidence of its correctness.

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

Maximum penalty: $10 000.

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

186—Inspector may take affidavits

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

187—Attendance of inspector at inquiries

Note—

A work health and safety law of another jurisdiction may include a provision about the participation of inspectors appointed under a law of that jurisdiction in inquiries.

Division 6—Offences in relation to inspectors

188—Offence to hinder or obstruct inspector

A person must not intentionally hinder or obstruct an inspector in exercising his or her compliance powers, or induce or attempt to induce any other person to do so.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

189—Offence to impersonate inspector

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

Maximum penalty: $10 000.

190—Offence to assault, threaten or intimidate inspector

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

Maximum penalty:

(a) in the case of an individual—$50 000 or imprisonment for 2 years or both;

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

Part 10—Enforcement measures

Division 1—Improvement notices

191—Issue of improvement notices

(1) This section applies if an inspector reasonably believes that a person—

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

(b) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.

(2) The inspector may issue an improvement notice requiring the person to—

(a) remedy the contravention; or

(b) prevent a likely contravention from occurring; or

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

192—Contents of improvement notices

(1) An improvement notice must state—

(a) that the inspector believes the person—

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

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

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

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

(d) the day by which the person is required to remedy the contravention or likely contravention.

(2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.

(3) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

193—Compliance with improvement notice

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

Maximum penalty:

(a) in the case of an individual—$50 000;

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

194—Extension of time for compliance with improvement notices

(1) This section applies if a person has been issued with an improvement notice.

(2) An inspector may, by written notice given to the person, extend the compliance period for the improvement notice.

(3) However, the inspector may extend the compliance period only if the period has not ended.

(4) In this section—

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

Division 2—Prohibition notices

195—Power to issue prohibition notice

(1) This section applies if an inspector reasonably believes that—

(a) an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; or

(b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

(2) The inspector may give a person who has control over the activity a direction prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until an inspector is satisfied that the matters that give or will give rise to the risk have been remedied.

(3) The direction may be given orally, but must be confirmed by written notice (a ***prohibition notice***) issued to the person as soon as practicable.

196—Contents of prohibition notice

(1) A prohibition notice must state—

(a) that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and

(b) briefly, the activity that the inspector believes involves or will involve the risk and the matters that give or will give rise to the risk; and

(c) the provision of this Act that the inspector believes is being, or is likely to be, contravened by that activity.

(2) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention referred to in subsection (1)(c).

(3) Without limiting section 195, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following:

(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.

Maximum penalty:

(a) in the case of an individual—$100 000;

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

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 his or her compliance powers.

199—Contents of non-disturbance notice

(1) A non-disturbance notice may require the person to—

(a) preserve the site at which a notifiable incident has occurred for a specified period; or

(b) prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances.

(2) A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out—

(a) the obligations of the person to whom the notice is issued; and

(b) the measures to be taken to preserve a site or prevent disturbance of a site; and

(c) the penalty for contravening the notice.

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

(4) A non-disturbance notice does not prevent any action—

(a) to assist an injured person; or

(b) to remove a deceased person; or

(c) that is essential to make the site safe or to prevent a further incident; or

(d) that is associated with a police investigation; or

(e) for which an inspector has given permission.

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.

Maximum penalty:

(a) in the case of an individual—$50 000;

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

(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

201—Issue of subsequent notices

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

Division 4—General requirements applying to notices

202—Application of Division

In this Division—

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

203—Notice to be in writing

A notice must be in writing.

204—Directions in notices

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

(a) refer to a code of practice; and

(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

205—Recommendations in notice

(1) An improvement notice or prohibition notice may include recommendations.

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

206—Changes to notice by inspector

(1) An inspector may make minor changes to a notice—

(a) for clarification; or

(b) to correct errors or references; or

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

(2) An inspector may also, in accordance with section 194, extend the compliance period for an improvement notice.

207—Regulator may vary or cancel notice

Except as provided in section 206, a notice issued by an inspector may only be varied or cancelled by the regulator.

208—Formal irregularities or defects in notice

A notice is not invalid only because of—

(a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or

(b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued or given to the person in accordance with section 209.

209—Issue and giving of notice

(1) A notice may be issued or given to a person—

(a) by delivering it personally to the person or sending it by post or fax 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.

Maximum penalty:

(a) in the case of an individual—$5 000;

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

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

Maximum penalty:

(a) in the case of an individual—$5 000;

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

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 the regulator to take other remedial action

(1) This section applies if the regulator reasonably believes that—

(a) circumstances in which a prohibition notice can be issued exist; and

(b) a prohibition notice cannot be issued at a workplace because, after taking reasonable steps, the person with management or control of the workplace cannot be found.

(2) The regulator may take any remedial action necessary to make the workplace safe.

213—Costs of remedial or other action

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

(a) section 211 from the person to whom the notice is issued; or

(b) section 212 from any person to whom the prohibition notice could have been issued in relation to the matter,

as a debt due to the regulator.

Division 6—Injunctions

214—Application of Division

In this Division—

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

215—Injunctions for noncompliance with notices

(1) The regulator may apply to SAET for an injunction—

(a) compelling a person to comply with a notice; or

(b) restraining a person from contravening a notice.

(2) The regulator may do so—

(a) whether or not proceedings have been brought for an offence against this Act in connection with any matter in relation to which the notice was issued; and

(b) whether any period for compliance with the notice has expired.

Part 11—Enforceable undertakings

216—Regulator may accept WHS undertakings

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

Note—

Section 230(3) requires the regulator to publish guidelines in relation to the acceptance of WHS undertakings.

(2) A WHS undertaking cannot be accepted for a contravention or alleged contravention that is—

(a) an industrial manslaughter offence; or

(b) 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.

Maximum penalty:

(a) in the case of an individual—$50 000;

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

220—Contravention of WHS undertaking

(1) The regulator may apply to the Magistrates Court for an order if a person contravenes a WHS undertaking.

(2) If the court is satisfied that the person who made the WHS undertaking has contravened the undertaking, the court, in addition to the imposition of any penalty, may make 1 or both of the following orders:

(a) an order directing the person to comply with the undertaking;

(b) an order discharging the undertaking.

(3) In addition to the orders referred to in subsection (2), the court may make any other order that the court considers appropriate in the circumstances, including orders directing the person to pay to the State—

(a) the costs of the proceedings; and

(b) the reasonable costs of the regulator in monitoring compliance with the WHS undertaking in the future.

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

Note—

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

221—Withdrawal or variation of WHS undertaking

(1) A person who has made a WHS undertaking may at any time, with the written agreement of the regulator—

(a) withdraw the undertaking; or

(b) vary the undertaking.

(2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.

(3) The regulator must publish, on the regulator's website, notice of the withdrawal or variation of a WHS undertaking.

222—Proceeding for alleged contravention

(1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if a WHS undertaking is in effect in relation to that contravention.

(2) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made a WHS undertaking in relation to the 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 the 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***).

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision	
1	Section 54(2) (decision following failure to commence negotiations)	(1)	A worker whose interests are affected by the decision or his or her representative appointed for the purpose of section 52(1)(b).
		(2)	A person conducting a business or undertaking whose interests are affected by the decision.
		(3)	A health and safety representative who represents a worker whose interests are affected by the decision.
2	Section 72(7) (decision in relation to training of health and safety representative)	(1)	A person conducting a business or undertaking whose interests are affected by the decision.
		(2)	A health and safety representative whose interests are affected by the decision.
3	Section 76(6) (decision relating to health and safety committee)	(1)	A worker whose interests are affected by the decision.
		(2)	A person conducting a business or undertaking whose interests are affected by the decision.
		(3)	A health and safety representative who represents a worker whose interests are affected by the decision.
4	Section 102 (decision on review of provisional improvement notice)	(1)	The person to whom the provisional improvement notice was issued.
		(2)	The health and safety representative who issued the provisional improvement notice.
		(3)	A worker whose interests are affected by the decision.
		(4)	A health and safety representative who represents a worker whose interests are affected by the decision.

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision	
		(5)	A person conducting a business or undertaking whose interests are affected by the decision.
5	Section 179 (forfeiture of thing)	The person entitled to the thing.	
6	Section 180 (return of seized things)	The person entitled to the thing.	
7	Section 191 (issue of improvement notice)	(1)	The person to whom the notice was issued.
		(2)	A person conducting a business or undertaking whose interests are affected by the decision.
		(3)	A worker whose interests are affected by the decision.
		(4)	A health and safety representative who represents a worker whose interests are affected by the decision.
8	Section 194 (extension of time for compliance with improvement notice)	(1)	The person to whom the notice was issued.
		(2)	A person conducting a business or undertaking whose interests are affected by the decision.
		(3)	A worker whose interests are affected by the decision.
		(4)	A health and safety representative who represents a worker whose interests are affected by the decision.
9	Section 195 (issue of prohibition notice)	(1)	The person to whom the notice was issued.
		(2)	The person with management or control of the workplace, plant or substance.
		(3)	A person conducting a business or undertaking whose interests are affected by the decision.
		(4)	A worker whose interests are affected by the decision.
		(5)	A health and safety representative who represents a worker whose interests are affected by the decision.
		(6)	A health and safety representative who gave a direction under section 85 to cease work, that is relevant to the prohibition notice.
10	Section 198 (issue of a non-disturbance notice)	(1)	The person to whom the notice was issued.

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision	
		(2)	The person with management or control of the workplace.
		(3)	A person conducting a business or undertaking whose interests are affected by the decision.
		(4)	A worker whose interests are affected by the decision.
		(5)	A health and safety representative who represents a worker whose interests are affected by the decision.
11	Section 201 (issue of subsequent notice)	(1)	The person to whom the notice was issued.
		(2)	The person with management or control of the workplace.
		(3)	A person conducting a business or undertaking whose interests are affected by the decision.
		(4)	A worker whose interests are affected by the decision.
		(5)	A health and safety representative who represents a worker whose interests are affected by the decision.
12	Section 207 (decision of regulator to vary or cancel notice)	(1)	The person to whom the notice was issued.
		(2)	The person with management or control of the workplace.
		(3)	A person conducting a business or undertaking whose interests are affected by the decision.
		(4)	A worker whose interests are affected by the decision.
		(5)	A health and safety representative who represents a worker whose interests are affected by the decision.
		(6)	In the case of a prohibition notice, a health and safety representative whose direction under section 85 to cease work gave rise to the notice.
13	A prescribed provision of the regulations	A person prescribed by the regulations as eligible to apply for review of the reviewable decision.	

(1a) A reference in the table in subsection (1) to a person conducting a business or undertaking or to a worker includes a representative of such a person or worker.

(2) Unless the contrary intention appears, a reference in this Part to a decision includes a reference to—

(a) making, suspending, revoking or refusing to make an order, determination or decision; or

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

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

(d) imposing a condition; or

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

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

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

(3) In this section—

person entitled to a thing means the person from whom it was seized unless that person is not entitled to possess it, in which case it means the owner of the thing.

Division 2—Internal review

224—Application for internal review

(1) An eligible person in relation to a reviewable decision, other than a decision made by the regulator or a delegate of the regulator, may apply to the regulator for review (an ***internal review***) of the decision within—

(a) the prescribed time after the day on which the decision first came to the eligible person's notice; or

(b) such longer period as the regulator allows.

(2) The application must be made in the manner and form required by the regulator.

(3) For the purposes of this section—

prescribed time is—

(a) in the case of a decision to issue an improvement notice the period specified in the notice for compliance with the notice or 14 days, whichever is the lesser; and

(b) in any other case, 14 days.

225—Internal reviewer

(1) The regulator may appoint a person or body to review decisions on applications under this Division.

(2) The person who made the decision cannot be an internal reviewer in relation to that decision.

226—Decision of internal reviewer

(1) The internal reviewer must review the reviewable decision and make a decision as soon as is reasonably practicable and within 14 days after the application for internal review is received.

(2) The decision may be—

(a) to confirm or vary the reviewable decision; or

(b) to set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.

(3) If the internal reviewer seeks further information from the applicant, the 14 day period ceases to run until the applicant provides the information to the internal reviewer.

(4) The applicant must provide the further information within the time (being not less than 7 days) specified by the internal reviewer in the request for information.

(5) If the applicant does not provide the further information within the required time, the decision is taken to have been confirmed by the internal reviewer at the end of that time.

(6) If the reviewable decision is not varied or set aside within the 14 day period, the decision is taken to have been confirmed by the internal reviewer.

227—Decision on internal review

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

(a) the decision on the internal review; and

(b) the reasons for the decision.

228—Stays of reviewable decisions on internal review

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

(2) If an application is made for an internal review of a decision to issue a prohibition notice or a non-disturbance notice, the reviewer may stay the operation of the decision.

(3) The reviewer may make the decision to stay the operation of a decision on the reviewer's own initiative or on the application of the applicant for review.

(4) The reviewer must make a decision on an application for a stay within 1 working day after the reviewer received 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 SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of—

(a) a reviewable decision made by the regulator; or

(b) a decision made, or taken to have been made, on an internal review.

(2) The application must be made—

(a) if the decision was to forfeit a thing (including a document), within 28 days after the day on which the decision first came to the applicant's notice; or

(b) in the case of any other decision, within 14 days after the day on which the decision first came to the applicant's notice; or

(c) if the regulator is required by the external review body to give the eligible person a statement of reasons, within 14 days after the day on which the statement is provided.

Part 13—Legal proceedings

Division 1—General matters

230—Prosecutions

(1) Subject to subsection (9), proceedings for an offence against this Act may only be brought by—

(a) the regulator; or

(b) an inspector with the written authorisation of the regulator (either generally or in a particular case).

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

(3) The regulator must issue, and publish on the regulator's website, general guidelines in relation to—

(a) the prosecution of offences under this Act; and

(b) the acceptance of WHS undertakings under this Act.

(3a) The South Australian Employment Court is conferred with jurisdiction to try a charge for a summary offence or a minor indictable offence (if such an offence is to be dealt with as a summary offence) under this Act.

(4) Subject to subsection (6), an indictable offence against this Act may be charged on complaint and, in such a case, the offence will be taken to be a summary offence but if the South Australian Employment Court determines that a person found guilty of such an offence should be subject to a fine exceeding $1 500 000 the court may remand the defendant to appear for sentence in the District Court.

(5) An offence constituted by a summary offence under subsection (4) will be taken to be a summary offence that lies within the jurisdiction of the South Australian Employment Court.

(6) Subsection (4) does not apply to or in relation to—

(a1) an industrial manslaughter offence; or

(a) a Category 1 offence; or

(b) a Category 2 offence where the alleged offender is a body corporate; or

(c) a Category 3 offence where the alleged offender is a body corporate.

(7) Subject to subsection (10), committal proceedings for a minor indictable offence under this Act must be conducted by a magistrate who is a member of the South Australian Employment Court.

(8) A charge for a minor indictable offence under this Act that is to be dealt with as a charge for a summary offence under the *Summary Procedure Act 1921* will be heard by a magistrate who is a member of the South Australian Employment Court (and the Court is vested with jurisdiction to deal with the matter).

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

(10) Despite subsections (7) and (8) or any other provision of this Act, a summary or minor indictable offence against this Act that is charged on the same information as a major indictable offence against this Act or any other Act will be dealt with according to the procedures applicable to major indictable offences under the *Criminal Procedure Act 1921*.

Note—

See section 102(3) of the *Criminal Procedure Act 1921*.

(11) Section 6A(3) of the *South Australian Employment Tribunal Act 2014* does not apply in relation to a summary or minor indictable offence referred to in subsection (10).

(12) To avoid doubt, an information for a major indictable offence against this Act must be laid in the Magistrates Court and be dealt with according to the procedures applicable to major indictable offences under the *Criminal Procedure Act 1921*.

231—Procedure if prosecution is not brought

(1) This section applies if—

(a) a person—

(i) reasonably considers that the occurrence of an act, matter or thing constitutes an industrial manslaughter offence, a Category 1 offence or a Category 2 offence; or

(ii) reasonably considers, from a coronial report or the proceedings at a coronial inquiry or inquest, that an industrial manslaughter offence, a Category 1 offence or a Category 2 offence has been committed; and

(b) no prosecution for the offence has been brought.

(1a) The person may make a written request to the regulator that a prosecution be brought.

(1b) The request may only be made—

(a) if subsection (1)(a)(i) applies—at least 6 months, but no more than 24 months after the act, matter or thing occurs; or

(b) if subsection (1)(a)(ii) applies—within 12 months after the report is made or the inquiry or inquest ends.

Note—

See section 232 in relation to the limitation period for prosecutions.

(2) Within 3 months after 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 (which must include sufficient detail that the basis for the decision can be readily understood); and

(b) advise the person who the applicant believes committed the offence of the application and of the matters set out in paragraph (a).

(2a) If, under subsection (2)(a)(i), the regulator advises the person that the investigation is not complete, the regulator must—

(a) until the investigation is complete, give the person a written update about the investigation at least every 3 months; and

(b) when the investigation is complete, give the person a written notice stating—

(i) whether a prosecution will be brought; and

(ii) if a prosecution will not be brought—the reasons why (which must include sufficient detail that the basis for the decision can be readily understood).

(3) If the regulator advises the person under subsection (2) or (2a) that a prosecution for an industrial manslaughter, Category 1 or Category 2 offence will not be brought, the regulator must—

(a) advise the person that the person may ask the regulator to refer the matter to the Director of Public Prosecutions for consideration; and

(b) if the person makes a written request to the regulator to do so, refer the matter to the Director of Public Prosecutions within 1 month of the request.

(4) The Director of Public Prosecutions must consider the matter and advise (in writing) the regulator within 1 month as to whether the Director considers that a prosecution should be brought.

(5) The regulator must ensure a copy of the advice is given to—

(a) the person who made the request; and

(b) the person who the applicant believes committed the offence.

(6) If the regulator declines to follow the advice of the Director of Public Prosecutions to bring proceedings, the regulator must give written reasons for the decision to any person to whom a copy of the advice is given under subsection (5).

(7) In this section a reference to the occurrence of an act, matter or thing includes a reference to a failure in relation to an act, matter or thing.

232—Limitation period for prosecutions

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

(a) within 2 years after the offence first comes to the notice of the regulator;

(b) within 1 year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against this Act;

(ba) if a matter has been referred to the Director of Public Prosecutions under section 231(3)(b), within 1 month after the Director provides the regulator with advice under section 231(4) as to whether the Director considers that a prosecution should be brought;

(c) if a WHS undertaking has been given in relation to the offence, within 6 months after—

(i) the WHS undertaking is contravened; or

(ii) it comes to the notice of the regulator that the WHS undertaking has been contravened; or

(iii) the regulator has agreed under section 221 to the withdrawal of the WHS undertaking.

(2) A proceeding for a Category 1 offence may be brought after the end of the applicable limitation period in subsection (1) if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

(3) This section does not apply to proceedings for an industrial manslaughter offence.

233—Multiple contraventions of health and safety duty provision

(1) Two or more contraventions of a health and safety duty provision by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.

(2) This section does not authorise contraventions of 2 or more health and safety duty provisions to be charged as a single offence.

(3) A single penalty only may be imposed in relation to 2 or more contraventions of a health and safety duty provision that are charged as a single offence.

(4) In this section—

health and safety duty provision means a provision of Division 2, 3 or 4 of Part 2.

Division 2—Sentencing for offences

234—Application of this Division

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

(2) A reference in this Division to a court is a reference to the court referred to in subsection (1).

235—Orders generally

(1) One or more orders may be made under this Division against the offender.

(2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

236—Adverse publicity orders

(1) The court may make an order (an ***adverse publicity order***) in relation to the offender requiring the offender—

(a) to take either or both of the following actions within the period specified in the order:

(i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;

(ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and

(b) to give the regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.

(2) The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.

(3) If the offender fails to give evidence to the regulator in accordance with subsection (1)(b), the regulator, or a person authorised in 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 regulator.

237—Orders for restoration

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

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

238—Work health and safety project orders

(1) The court may make an order requiring the offender to undertake a specified project for the general improvement of work health and safety within the period specified in the order.

(2) The order may specify conditions that must be complied with in undertaking the specified project.

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 four days before the time specified in it for the appearance.

(5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the court-ordered WHS undertaking, it must discharge the offender without any further hearing of the proceeding.

240—Injunctions

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

Note—

An injunction may also be obtained under section 215 for non-compliance with a non-disturbance notice, improvement notice or prohibition notice.

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.

Maximum penalty:

(a) in the case of an individual—$50 000;

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

(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

(3) This section does not apply to an order or injunction under section 239 or 240.

Division 3—Infringement notices

243—Infringement notices

A reference in this Act to an infringement notice will be taken to be a reference to an expiation notice issued under the *Expiation of Offences Act 1996* (and an expiation notice may be issued with relation to any matter that may be the subject of an infringement notice under this Act).

Division 4—Offences by bodies corporate

244—Imputing conduct to bodies corporate

(1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

(2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against a body corporate for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.

(3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against a body corporate for that offence if the person referred to in subsection (1) made that mistake of fact.

Division 5—The Crown

245—Offences and the Crown

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

(2) For the purposes of this Act, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Crown.

(3) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the Crown for that offence to prove that the person referred to in subsection (2) had the relevant knowledge, intention or recklessness.

(4) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the Crown for that offence if the person referred to in subsection (2) made that mistake of fact.

246—WHS civil penalty provisions and the Crown

(1) If the Crown contravenes a WHS civil penalty provision, the monetary penalty to be imposed on the Crown is the penalty applicable to a body corporate.

(2) For the purposes of a WHS civil penalty provision, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the Crown.

(3) If a WHS civil penalty provision requires proof of knowledge, it is sufficient in proceedings against the Crown for a contravention of that provision to prove that the person referred to in subsection (2) had that knowledge.

247—Officers

(1) A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Crown is taken to be an officer of the Crown for the purposes of this Act.

(2) A Minister of a State or the Commonwealth is not in that capacity an officer for the purposes of this Act.

248—Responsible agency for the Crown

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

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

(3) If proceedings are brought against the Crown for an offence against this Act or in relation to a contravention of this Act, the responsible agency in relation to the offence or contravention may be specified in any document initiating, or relating to, the proceedings.

(4) The responsible agency in relation to an offence or a contravention of this Act is entitled to act in proceedings against the Crown for the offence or relating to the contravention and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused or defendant in the proceedings are conferred or imposed on the responsible agency.

(5) The person prosecuting the offence or bringing the proceedings may change the responsible agency during the proceedings with the court's leave.

(6) In this section—

responsible agency—

(a) in relation to a notice referred to in subsection (1) is—

(i) in the case of a provisional improvement notice, improvement notice or infringement notice, the agency of the Crown the acts or omissions of which are alleged to contravene this Act; and

(ii) in the case of a prohibition notice, the agency of the Crown which has control over the activity referred to in section 195(1)(a) or (b); and

(iii) in the case of a non-disturbance notice, the agency of the Crown with the management and control of the workplace; and

(iv) in the case of a notice of entry under Part 7, the agency of the Crown conducting the relevant business or undertaking or with the management and control of the workplace; and

(b) in relation to an offence or proceedings for a contravention of this Act, is the agency of the Crown—

(i) the acts or omissions of which are alleged to constitute the offence or contravention; or

(ii) if that agency has ceased to exist, that is the successor of that agency; or

(iii) if that agency has ceased to exist and there is no clear successor, that a court with jurisdiction to hear the relevant proceedings declares to be the responsible agency.

Division 6—Public authorities

249—Application to public authorities that are bodies corporate

This Division applies only to public authorities that are bodies corporate.

250—Proceedings against public authorities

(1) Proceedings may be brought under this Act against a public authority in its own name.

(2) Nothing in this Division affects any privileges that a public authority may have under the Crown.

251—Imputing conduct to public authorities

(1) For the purposes of this Act, any conduct engaged in on behalf of a public authority by an employee, agent or officer of the public authority acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the public authority.

(2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the public authority for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.

(3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the public authority for that offence if the person referred to in subsection (1) made that mistake of fact.

252—Officer of public authority

A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public authority is taken to be an officer of the public authority for the purposes of this Act.

253—Proceedings against successors to public authorities

(1) Proceedings for an offence against this Act that were instituted against a public authority before its dissolution, or that could have been instituted against a public authority if not for its dissolution, may be continued or instituted against its successor if the successor is a public authority.

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

(3) Similarly, any penalty paid by a public authority in relation to an infringement notice is taken to be a penalty paid by its successor if the successor is a public authority.

Division 7—WHS civil penalty provisions

254—When is a provision a WHS civil penalty provision

(1) A subsection of this Act (or a section that is not divided into subsections) is a ***WHS civil penalty provision*** if—

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

(b) another provision of this Act specifies that the subsection (or section) is a WHS civil penalty provision.

(2) A subregulation (or a regulation that is not divided into subregulations) is a ***WHS civil penalty provision*** if—

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

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

255—Proceedings for contravention of WHS civil penalty provision

Subject to this Division, proceedings may be brought in SAET against a person for a contravention of a WHS civil penalty provision.

256—Involvement in contravention treated in same way as actual contravention

(1) A person who is involved in a contravention of a WHS civil penalty provision is taken to have contravened that provision.

(2) A person is ***involved in*** a contravention of a civil penalty provision if, and only if, the person—

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced the contravention, whether by threats or promises or otherwise; or

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or

(d) has conspired with others to effect the contravention.

257—Contravening a civil penalty provision is not an offence

A contravention of a WHS civil penalty provision is not an offence.

258—Civil proceeding rules and procedure to apply

Despite section 32 of the *South Australian Employment Tribunal Act 2014*, SAET must apply the rules of evidence and procedure for civil proceedings when hearing proceedings for a contravention of a WHS civil penalty provision.

259—Proceeding for a contravention of a WHS civil penalty provision

(1) In a proceeding for a contravention of a WHS civil penalty provision, if SAET is satisfied that a person has contravened a WHS civil penalty provision, SAET may—

(a) order the person to pay a monetary penalty that the court considers appropriate; and

(b) make any other order that SAET considers appropriate, including an injunction.

(2) A monetary penalty imposed under subsection (1) must not exceed the relevant maximum amount of monetary penalty specified under Part 7 or the regulations in relation to a contravention of that WHS civil penalty provision.

260—Proceeding may be brought by the regulator or an inspector

Except as provided in section 260A, proceedings for a contravention of a WHS civil penalty provision may only be brought by—

(a) the regulator; or

(b) an inspector with the written authorisation of the regulator (either generally or in a particular case).

260A—Proceeding may be brought by a party for contravention of certain orders relating to arbitrations

(1) If an order made for the purposes of arbitration under section 102C(3) or 142(3) is contravened, proceedings may be brought in SAET against a person for the contravention of the relevant WHS civil penalty provision by a person affected by the contravention of the order.

(2) Proceedings under this section must be instituted within 1 month after the day on which the contravention of the order first occurred.

(3) The Registrar of SAET must ensure that a copy of an application made under this section is provided to the regulator.

(4) If, in proceedings under this section, SAET finds that a party has contravened an order under section 102C(3) or 142(3), SAET should (in addition to any monetary penalty imposed) also order that the contravening party pay the applicant's reasonable costs in relation to the proceedings unless SAET is satisfied that it would be contrary to the interests of justice to make such an order.

(5) If SAET orders the payment of costs, the amount ordered may be recovered in a court of competent jurisdiction as a debt.

261—Limitation period for WHS civil penalty proceedings

Proceedings for a contravention of a WHS civil penalty provision may be brought within 2 years after the contravention first comes to the notice of the regulator.

262—Recovery of a monetary penalty

(1) In connection with proceedings before SAET for the purposes of this Division, if SAET orders a person to pay a monetary penalty—

(a) the penalty is payable to the State; and

(b) the penalty may be recovered in a court of competent jurisdiction as a debt; and

(c) the order is enforceable, and any action may be taken in respect of the order, as if it were a judgment or order of the appropriate court.

(2) In this section—

appropriate court means—

(a) in relation to an order for an amount that does not exceed the jurisdictional limit of the Magistrates Court for a monetary claim founded on contract—the Magistrates Court; or

(b) in any other case—the District Court.

263—Civil double jeopardy

SAET must not make an order against a person under section 259 for contravention of a WHS civil penalty provision if an order has been made against the person under a civil penalty provision under an Act of the Commonwealth or a State in relation to conduct that is substantially the same as the conduct constituting the contravention.

264—Criminal proceedings during civil proceedings

(1) Proceedings against a person for a contravention of a WHS civil penalty provision are stayed if—

(a) criminal proceedings are commenced or have already commenced against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision.

(2) The proceedings for the order may be resumed if the person is not convicted or found guilty of the offence. Otherwise, the proceedings for the order are dismissed.

265—Criminal proceedings after civil proceedings

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

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

(1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if—

(a) the individual previously gave the information or produced the documents in proceedings against the individual for a contravention of a WHS civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision.

(2) However, this does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the contravention of the WHS civil penalty provision.

Division 8—Civil liability not affected by this Act

267—Civil liability not affected by this Act

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

(a) conferring a right of action in civil proceedings in relation to a contravention of a provision of this Act; or

(b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or

(c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be brought, with 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.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

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

(a) indicating the respect in which it is false or misleading and, if practicable, providing correct information; or

(b) accompanying the document with a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate—

(i) stating that the document is, to the knowledge of the 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.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

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

269—Act does not affect legal professional privilege

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

270—Immunity from liability

(1) An inspector, or other person engaged in the administration of this Act, incurs no civil liability for an act or omission done or omitted to be done in good faith and in the execution or purported execution of powers and functions under this Act.

(2) A civil liability that would, but for subsection (1), attach to a person, attaches instead to the State.

271—Confidentiality of information

(1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act (other than under Part 7).

(2) The person must not do any of the following:

(a) disclose to anyone else—

(i) the information; or

(ii) the contents of or information contained in the document;

(b) give access to the document to anyone else;

(c) use the information or document for any purpose.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—

(a) about a person, with the person's consent; or

(b) that is necessary for the exercise of a power or function under this Act; or

(c) that is made or given by the regulator or a person authorised by the regulator if the regulator reasonably believes the disclosure, access or use—

(i) is necessary for administering, or monitoring or enforcing compliance with, this Act; or

(ii) is necessary for the administration or enforcement of another Act prescribed by the regulations; or

(iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or

(iv) is necessary for the recognition of authorisations under a corresponding WHS law; or

(v) is required for the exercise of a power or function under a corresponding WHS law; or

(d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or

(e) that is required or authorised under a law; or

(f) to a Minister.

(4) A person 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.

Maximum penalty:

(a) in the case of an individual—$10 000;

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

271A—Additional ways that regulator may disclose information

(1) Subject to this section, the regulator or a person authorised by the regulator may disclose information relating to an incident to—

(a) a person injured in the incident, or their representative; or

(b) a family member of a person who is deceased as a result of the incident who is seeking to understand the circumstances of the death of the person; or

(c) a family member or other person who is empowered to make decisions on behalf of a person who is incapacitated due to serious injury as a result of the incident who is seeking to understand the circumstances of the serious injury of the person; or

(d) an interested party who has a direct connection to the incident to which the information relates, if the regulator reasonably believes that disclosing the information would assist in the administration or enforcement of this Act.

(2) Subsection (1) does not apply to information that—

(a) is subject to legal professional privilege; or

(b) is commercial information of a confidential nature; or

(c) is subject to a confidentiality requirement under any other Act or law; or

(d) relates to an ongoing investigation which may be jeopardised if the information were to be disclosed.

(3) Subject to subsection (4), a disclosure under subsection (1)—

(a) may not be made to a person who is, or who may reasonably be expected to be, required to give evidence as part of an investigation or prosecution relating to the incident; and

(b) may only be made in relation to information which relates to an incident that occurs after the commencement of this section.

(4) Subsection (3)(b) does not apply in relation to a disclosure made to a family member of a person who is deceased as a result of the incident.

(5) The regulator must establish and maintain a policy, published on the regulator's website, that relates to the circumstances in which information may be released under subsection (1).

(6) In this section—

family member in relation to a person means the following:

(a) a spouse of the person;

(b) a domestic partner of the person within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

(c) a parent, step-parent or grandparent of the person;

(d) a sibling or step-sibling of the person;

(e) a child, step-child or grandchild of the person;

(f) a person who, according to Aboriginal or Torres Strait Islander kinship rules, is a member of a culturally recognised family group of the person;

interested party in relation to an incident means the following:

(a) the person conducting the business or undertaking or their representative;

(b) the worker or workers affected by the incident or their representative;

(c) if the worker or workers affected by the incident are in a work group, the health and safety representative for the work group;

(d) the person bringing the incident to the attention of the regulator.

272—No contracting out

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

272A—Insurance or other indemnity against penalties

(1) A person must not, without reasonable excuse—

(a) enter into a contract of insurance or other arrangement that purports to insure or indemnify a person for a liability for all or part of a monetary penalty under this Act; or

(b) provide a contract of insurance or an indemnity for a liability for all or part of a monetary penalty under this Act; or

(c) take the benefit of a contract of insurance or other arrangement, or an indemnity, that purports to insure or indemnify a person for a liability for all or part of a monetary penalty under this Act.

Maximum penalty: $50 000.

(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

(3) A term of a contract of insurance or other arrangement, or an indemnity, is void to the extent it purports to insure or indemnify a person for a liability for all or part of a monetary penalty under this Act.

272B—Officer may be taken to have committed offence against section 272A

(1) If a body corporate commits an offence against section 272A, each officer of the body corporate is taken to have also committed the offence if—

(a) the officer authorised or permitted the body corporate's conduct constituting the offence; or

(b) the officer was, directly or indirectly, knowingly concerned in the body corporate's conduct constituting the offence.

(2) The officer of the body corporate may be proceeded against for, and convicted of, the offence against section 272A whether or not the body corporate has been proceeded against for, or convicted of, the offence.

(3) This section does not affect either of the following:

(a) the liability of the body corporate for the offence against section 272A;

(b) the liability of any person, whether or not the person is an officer of the body corporate, for the offence against section 272A.

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.

Maximum penalty:

(a) in the case of an individual—$5 000;

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

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 the Minister is acting on the recommendation of the advisory committee and that code of practice, variation or revocation was developed by a process that involved consultation between—

(a) the Governments of the Commonwealth and each State and Territory; and

(b) unions; and

(c) employer organisations.

(3) On each occasion that the advisory committee is required to make a recommendation under subsection (2), the advisory committee must—

(a) establish a committee to advise it on, and assist it with, the making of the recommendation; and

(b) consult the Small Business Commission so that the Commission may assess whether the code of practice would affect small business if implemented and, if so, provide any comments or advice that the Commission considers to be appropriate in the circumstances (including that the code be varied).

(3a) A committee established under subsection (3)(a) must consist of—

(a) at least 2 members of the advisory committee; and

(b) such other members as are determined by the advisory committee.

(4) 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.

(5) 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 Government Gazette or on such later date as is specified in the approval, variation or revocation.

(6) 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 Government Gazette and on a website determined by the Minister or in a newspaper circulating generally throughout the State.

(7) 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.

(8) An approved code of practice or the variation of a code of practice is subject to disallowance by Parliament.

(9) The Minister must ensure that each approved code of practice or variation is laid before both Houses of Parliament within 6 sitting days after it is published in the Gazette.

(10) If either House of Parliament passes a resolution disallowing an approved code of practice or the variation of a code of practice, then the code of practice or variation ceases to have effect.

(11) A resolution is not effective for the purposes of subsection (10) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not all fall within the same session of Parliament) after the day on which the code of practice or variation was laid before the House.

275—Use of codes of practice in proceedings

(1) This section applies in a proceeding for an offence against this Act.

(2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.

(3) The court may—

(a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and

(b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Note—

See section 18 for the meaning of ***reasonably practicable***.

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

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 in relation to matters set out in Schedule 3.

(3) The regulations may—

(a) be of general or limited application; or

(b) differ according to differences in time, place or circumstance; or

(c) leave any matter or thing to be, from time to time, determined, applied or approved by the regulator, an inspector or any other prescribed person or body of persons; or

(d) apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether—

(i) with or without modification; or

(ii) as in force at a particular time or as in force or remade from time to time; or

(e) prescribe exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed; or

(f) allow the regulator to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the regulator; or

(g) prescribe fees for doing any act or providing any service for the purposes of this Act and prescribe the circumstances and way in which fees can be refunded, waived or reduced; or

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

(i) prescribe—

(i) offences against this Act or the regulations that are to be taken to be infringement offences for the purposes of this Act; and

(ii) an expiation fee for each offence which is declared or prescribed by this Act or the regulations to be an infringement offence, which fee must not exceed 20% of the penalty for the offence which is declared or prescribed as the infringement offence.

Division 4—Reviews

277—Reviews

(1) The Minister must cause a review of the operation of this Act to be conducted as soon as practicable after the expiry of 1 year from its commencement.

(2) The review under subsection (1) must include a specific report on the extent to which inspectors have attended at workplaces under section 117 and an assessment of the operation and effectiveness of the policy established by the regulator under that section.

(3) The Minister must then cause a second review of the operation of this Act to be conducted as soon as practicable after the expiry of 3 years from its commencement.

(4) The results of a review under this section must be embodied in a written report.

(5) The Minister must, within 6 sitting days after receiving a report under subsection (4), cause a copy of the report to be laid before both Houses of Parliament.

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

1 This Act applies to the storage and handling of dangerous goods even if the dangerous goods are not at a workplace or for use in carrying out work.

2 For the purposes of clause 1—

(a) a reference in this Act to carrying out work includes a reference to the storage or handling of dangerous goods; and

(b) a reference in this Act to a workplace includes a reference to the premises at or in which the dangerous goods are stored or handled; and

(c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.

3 This Act applies to the operation or use of high risk plant, affecting public safety, even if the plant is not situated, operated or used at a workplace or for use in carrying out work.

4 For the purposes of clause 3—

(a) a reference in this Act to carrying out work includes a reference to the operation and use of high risk plant affecting public safety; and

(b) a reference in this Act to a workplace includes a reference to any high risk plant affecting public safety and the premises at or in which the plant is situated or used; and

(c) a reference in this Act to work health and safety (however expressed) includes a reference to public health and safety.

5 The operation of this Schedule is subject to any exclusions or modifications prescribed by the regulations.

6 In this Schedule—

dangerous goods means anything prescribed as dangerous goods;

high risk plant means plant prescribed as high risk plant.

Schedule 2—Local tripartite consultation arrangements

Part 2—The Mining and Quarrying Occupational Health and Safety Committee

12—The Committee

(1) The *Mining and Quarrying Occupational Health and Safety Committee* (the ***Committee***) continues in existence.

(2) The Committee will consist of 7 persons appointed by the Minister, of whom—

(a) 2 will be persons working in the field of occupational health and safety nominated by the advisory committee; and

(b) 1 will be a member of the Department who has experience in the mining and quarrying industries; and

(c) 1 will be a person nominated by the South Australian Chamber of Mines and Energy, and 1 will be a person nominated by Cement Concrete and Aggregates Australia, to represent the interests of employers involved in the mining and quarrying industries; and

(d) 2 will be persons nominated by the United Trades and Labor Council to represent the interests of workers who work in the mining and quarrying industries.

(3) The Minister will appoint 1 of the members of the Committee appointed under subclause (2)(a) to be the presiding member of the Committee.

(4) The Minister may appoint a suitable person to be a deputy of a member of the Committee and to act as a member of the Committee during any period of absence of the member.

(5) A member of the Committee may be appointed for a term (not exceeding 3 years) determined by the Minister and, on the expiration of a term of appointment, is eligible for reappointment.

(6) The Minister may, on reasonable grounds, remove a member of the Committee from office at any time.

(7) A member of the Committee may resign by written notice addressed to the Minister.

(8) An act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(9) Four members of the Committee constitute a quorum of the Committee.

(10) In the absence of the presiding member at a meeting of the Committee, the members present may decide who is to preside.

(11) A decision carried by at least 4 members of the Committee is a decision of the Committee.

(12) Each member present at a meeting of the Committee is entitled to 1 vote on any matter arising for decision at the meeting.

(13) The Committee must cause an accurate record to be kept of its proceedings.

(14) Subject to this Schedule, the business of the Committee will be conducted in a manner determined by the Committee.

(15) A member of the Committee who has a direct or indirect pecuniary interest in a matter under consideration by the Committee—

(a) must disclose the nature of the interest to the Committee; and

(b) must not take part in any deliberation or decision of the Committee with respect to the matter.

Maximum penalty: $2 000.

(16) A disclosure under subclause (15) must be recorded in the minutes of the Committee.

(17) The Committee may, in connection with the performance of its functions, make use of the services, facilities and staff of RTWSA.

13—Application of funds

(1) Money available to the Committee from the Mining and Quarrying Industries Fund under Schedule 9 of the *Return to Work Act 2014* may be used for any of the following purposes:

(a) to promote and support practices, procedures and arrangements designed to protect workers from silicosis;

(b) to support education in the field of occupational health or safety in the mining and quarrying industries;

(c) to initiate or support research and studies into occupational health or safety that could benefit workers in the mining and quarrying industries;

(d) to promote and support persons or organisations working to prevent, alleviate or treat the kinds of disabilities suffered by workers in the mining and quarrying industries;

(e) to support any other kind of activity that could directly or indirectly improve occupational health or safety in the mining and quarrying industries or assist in the rehabilitation of disabled workers in those industries.

(2) The Committee has all such powers as are reasonably necessary for the effective performance of its functions (including the power to establish subcommittees and to engage, as may be appropriate, experts or consultants to assist the Committee in the performance of its functions).

(3) The Committee must, in making grants of money under this Schedule, give preference to supporting projects directed at improving occupational health or safety in those industries that involve exposure to silica dust and in particular to supporting specialised research and training projects directed at that purpose in South Australia.

(4) The Committee must not spend any part of the principal standing to the credit of Part B of the Mining and Quarrying Industries Fund without the specific approval of the Minister and in any case the Committee is not to spend in any financial year more than 20% of the principal that, at the commencement of that financial year, is standing to the credit of that part of the fund.

(5) The Committee must after the end of each financial year prepare a report on its operations during that financial year.

(6) The report must be submitted to the Minister and laid before both Houses of Parliament by the Minister.

14—Ministerial control

The Committee is, in the performance of its functions, subject to the control and direction of the Minister.

Schedule 3—Regulation-making powers

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.

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—WHS entry permits

Matters relating to WHS entry permits, including providing for—

(a) eligibility for WHS entry permits; and

(b) procedures for applications for WHS entry permits and objections to applications for WHS entry permits; and

(c) conditions of WHS entry permits; and

(d) the form of WHS entry permits; and

(e) requirements for training; and

(f) records of WHS entry permits.

12—Identity cards

Matters relating to identity cards.

13—Forfeiture

Matters relating to—

(a) costs of forfeiture and disposal of forfeited things; and

(b) disposal of seized things and forfeited things.

14—Review of decisions

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

(a) prescribing decisions as reviewable decisions for the purposes of Part 12 and conferring jurisdiction on SAET to conduct reviews; and

(b) prescribing procedures for internal and external review of decisions under the regulations; and

(c) conferring jurisdiction on a court to conduct reviews under the regulations.

Schedule 4—Supplementary panel members

1—Supplementary panel members

(1) For the purposes of proceedings before SAET under section 65 or Part 12, there will be the following panels of supplementary panel members:

(a) a panel nominated by the Minister after taking into account the recommendations of employer associations;

(b) a panel nominated by the Minister after taking into account the recommendations of the United Trades and Labor Council.

(2) In exercising its powers under a provision referred to in subclause (1), SAET will, if the President of SAET so determines, sit with—

(a) 1 supplementary panel member from a panel referred to in subclause (1)(a); and

(b) 1 supplementary panel member from a panel referred to in subclause (1)(b).

Schedule 5—Provisions of local application

1—Provision of information by RTWSA

(1) RTWSA will, to the extent required by a scheme established by the Minister after consultation with RTWSA, furnish to the advisory committee and the Department, in accordance with the terms of the scheme, any of the following information obtained by RTWSA in the performance or exercise of its functions or powers under a related Act:

(a) information about any work-related injury, or about any specified class of work-related injury, reported to or investigated by RTWSA;

(b) the steps being taken by any employer, or any employer of a specified class, to protect employees from injury or risks to health, safety or welfare, or to assist in the rehabilitation of employees who have suffered injuries in connection with their work;

(c) information relating to the cost or frequency of claims involving a particular employer, or class of employers, so as to allow comparisons between employers in a particular industry, or part of an industry;

(d) the outcome of any investigation, inquiry or other action undertaken by RTWSA;

(e) other information of a kind prescribed by the regulations.

(2) To avoid doubt, section 185 of the *Return to Work Act 2014* does not apply in relation to the disclosure of information under subclause (1).

(3) In this clause—

related Act means—

(a) the *Return to Work Act 2014*; or

(b) the *Return to Work Corporation of South Australia Act 1994*.

2—Registration of employers

(1) Subject to subclause (2), a person who is required to be registered as an employer under the *Return to Work Act 2014* is also required to be registered under this Act.

(2) A person is not required to be registered if the person is exempt from the obligation to be registered by the regulations.

(3) RTWSA will undertake registrations under this clause in conjunction with the registration of employers under the *Return to Work Act 2014*.

(4) A periodical fee is payable in relation to a registration under this clause.

(5) Subject to this clause, the amount of the fee will be set by RTWSA—

(a) taking into account the criteria prescribed by or under subclause (6); and

(b) on the basis that the total amount paid to RTWSA for a particular financial year by persons registered under this clause should, so far as is reasonably practicable, equal the prescribed amount for that financial year.

(6) For the purposes of subclause (5)(a), the criteria to be taken into account are—

(a) that the fee or fees paid by a particular person should reflect the aggregate remuneration paid to the person's employees in each class of industry in which the person employs employees; and

(b) that the fee or fees paid by a person in a particular industry should reflect the risk of work-related injuries in that industry; and

(c) that the fee or fees paid by a particular person over a particular financial year should reflect any matters taken into account by RTWSA under section 139 of the *Return to Work Act 2014* for the purposes of the calculation or imposition of a premium under that Act,

and such other criteria as may be prescribed by the regulations (which regulations may, if they so provide, revoke or replace any of the criteria referred to above).

(7) A prescribed percentage of the prescribed amount for a particular financial year will be payable to the Department in accordance with guidelines established by the Treasurer to be applied towards the costs associated with the administration of this Act.

(8) The prescribed amount for a financial year will be an amount fixed for that financial year by the regulations (but if any such regulation is not made before the commencement of the relevant financial year, or is disallowed or revoked, then the prescribed amount for that financial year will be the amount that applied under this clause for the preceding financial year).

(9) Subclause (5)(b) is subject to the following qualifications:

(a) if the total amount paid under this clause for a particular financial year exceeds the prescribed amount for that year, the amount that is sought to be recovered under subclause (5)(b) for the next financial year should be the prescribed amount for that year less the amount of that excess;

(b) if the total amount paid under this clause for a particular financial year is less than the prescribed amount for that year, the amount that is sought to be recovered under subclause (5)(b) for the next financial year should be the prescribed amount for that year plus the amount of that deficiency.

(10) A fee imposed under this clause will be payable to RTWSA in accordance with the regulations.

(11) If a person fails to pay a fee, or the full amount of a fee, in accordance with the regulations, RTWSA may recover the unpaid amount as if it were unpaid premium under Part 9 of the *Return to Work Act 2014*.

(12) The Department is entitled to information provided to RTWSA for the purposes of this clause.

(13) A person who fails to comply with this clause is guilty of an offence.

Maximum penalty: $10 000.

3—Executive Director

(1) There will be an Executive Director.

(2) The Executive Director is to be an employee in the Public Service of the State appointed to the office of Executive Director by the Governor.

(3) The Minister may assign an employee in the Public Service to act as the Executive Director—

(a) during a vacancy in the office of the Executive Director; or

(b) when the Executive Director is absent from, or unable to discharge, official duties.

(4) Subject to subclause (5), the Minister may give directions to the Executive Director.

(5) The Minister may not give directions to the Executive Director in respect of the exercise of powers and functions under this Act.

Schedule 6—Transitional provisions

Part 9—Transitional provisions

12—Interpretation

In this Part—

relevant day means the day on which this Part comes into operation;

repealed Act means the *Occupational Health, Safety and Welfare Act 1986*.

13—Duties of designers

(1) Subject to this clause, the duties imposed on a designer under section 22 of this Act do not apply to or in relation to the designing of any plant, substance or structure (including with respect to carrying out any calculations, analysis, testing or examination or with respect to the provision of any information) if the designer commenced (or commenced and completed) designing the plant, substance or structure before the relevant day.

(2) If—

(a) subclause (1) applies in relation to a particular design; and

(b) the designer would be subject to the operation of section 23A or 24 of the repealed Act if those sections were still in operation,

then—

(c) the designer must comply with the relevant requirements of those sections as if the repealed Act were still in operation; and

(d) if the designer fails to comply with paragraph (c), then action may be brought against the designer (including by the undertaking of a prosecution) as if the repealed Act were still in operation.

(3) If a designer commenced designing any plant, substance or structure before the relevant day but has not completed the design by the second anniversary of the relevant day, then the designer will, in relation to the design, cease to have the benefit of subclause (1) and the designer must comply with the requirements of this Act in relation to the duties of a designer (as if this Act had been in operation at the time that the designer commenced designing).

(4) Despite a preceding subclause, if—

(a) a designer carries out any calculations, analysis, testing or examination in connection with the performance of a duty under the repealed Act (as taken to be in operation under subclause (2)(d)); and

(b) the designer would, if the calculations, analysis, testing or examination were carried out under this Act, be subject to a requirement set out in section 22(4)(b) or (5) of this Act,

then the designer must comply with those requirements as if that section applied in relation to the plant, substance or structure.

14—Duties of manufacturers

(1) Subject to this clause, the duties imposed on a manufacturer under section 23 of this Act do not apply to or in relation to the manufacture of any plant, substance or structure (including with respect to carrying out any calculations, analysis, testing or examination or with respect to the provision of any information) if the manufacturer commenced (or commenced and completed) any process associated with the manufacturing of the plant, substance or structure before the relevant day.

(2) If—

(a) subclause (1) applies in relation to the manufacture of any particular plant, substance or structure; and

(b) the manufacturer would be subject to the operation of section 24 of the repealed Act if that section were still in operation,

then—

(c) the manufacturer must comply with the relevant requirements of that section as if the repealed Act were in operation; and

(d) if the manufacturer fails to comply with paragraph (c), then action may be brought against the manufacturer (including by the undertaking of a prosecution) as if the repealed Act were still in operation.

(3) If a manufacturer commenced any process associated with the manufacturing of any plant, substance or structure before the relevant day but has not completed the manufacturing by the first anniversary of the relevant day, then the manufacturer will, in relation to the manufacture of the plant, substance or structure, cease to have the benefit of subclause (1) and the manufacturer must comply with the requirements of the Act in relation to the duties of a manufacturer (as if this Act had been in operation at the time that the manufacturer commenced this process).

(4) Despite a preceding subclause, if—

(a) a manufacturer carries out any calculations, analysis, testing or examination in connection with the performance of a duty under the repealed Act (as taken to be in operation under subclause (2)(d)); and

(b) the manufacturer would, if the calculations, analysis, testing or examination were carried out under this Act, be subject to a requirement set out in section 23(4)(b) or (5) of this Act,

then the manufacturer must comply with those requirements as if that section applied in relation to the plant, substance or structure.

15—Duties of importers

(1) Subject to this clause, the duties imposed on an importer under section 24 of this Act do not apply to or in relation to the importing of any plant, substance or structure (including with respect to carrying out any calculations, analysis, testing or examination or with respect to the provision of any information) if the importer commenced (or commenced and completed) any steps constituting the importation of the plant, substance or structure before the relevant day.

(2) If—

(a) subclause (1) applies in relation to the importing of any particular plant, substance or structure; and

(b) the importer would be subject to the operation of section 24 of the repealed Act if that section were still in operation,

then—

(c) the importer must comply with the relevant requirements of that section as if the repealed Act were in operation; and

(d) if the importer fails to comply with paragraph (c), then action may be brought against the importer (including by the undertaking of a prosecution) as if the repealed Act were still in operation.

(3) If an importer commenced any process associated with the importing of any plant, substance or structure before the relevant day but has not completed the importing by the first anniversary of the relevant day, then the importer will, in relation to the importing of the plant, substance or structure, cease to have the benefit of subclause (1) and the importer must comply with the requirements of the Act in relation to the duties of an importer (as if the Act had been in operation at the time that the importer commenced this process).

(4) Despite a preceding subclause, if—

(a) an importer carries out any calculations, analysis, testing or examination in connection with the performance of a duty under the repealed Act (as taken to be in operation under subclause (2)(d)); and

(b) the importer would, if the calculations, analysis, testing or examination were carried out under this Act, be subject to a requirement set out in section 24(4)(b) or (5) of this Act,

then the importer must comply with those requirements as if that section applied in relation to the plant, substance or structure.

16—Duties of suppliers

(1) Subject to this clause, the duties imposed on a supplier under section 25 of this Act do not apply to or in relation to the supply of any plant, substance or structure (including with respect to carrying out any calculations, analysis, testing or examination or with respect to the provision of any information) if the supplier commenced (or commenced and completed) any process associated with the supply of the plant, substance or structure before the relevant day.

(2) If—

(a) subclause (1) applies in relation to the supply of any particular plant, substance or structure; and

(b) the supplier would be subject to the operation of section 24 of the repealed Act if that section were still in operation,

then—

(c) the supplier must comply with the relevant requirement of that section as if the repealed Act were in operation; and

(d) if the supplier fails to comply with paragraph (c), then action may be brought against the supplier (including by the undertaking of a prosecution) as if the repealed Act were still in operation.

(3) If a supplier commenced any process associated with the supply of any plant, substance or structure before the relevant day but has not completed the supplying by the first anniversary of the relevant day, then the supplier will, in relation to the supply of the plant, substance or structure, cease to have the benefit of subclause (1) and the supplier must comply with the requirements of the Act in relation to the duties of a supplier (as if this Act had been in operation at the time that the supplier commenced this process).

(4) Despite a preceding subclause, if—

(a) a supplier carries out any calculations, analysis, testing or examination in connection with the performance of a duty under the repealed Act (as taken to be in operation under subclause (2)(d)); and

(b) the supplier would, if the calculations, analysis, testing or examination were carried out under this Act, be subject to a requirement set out in section 25(4)(b) or (5) of this Act,

then the supplier must comply with those requirements as if that section applied in relation to the plant, substance or structure.

17—Duties of persons who install, construct or commission plant or structures

(1) In this clause—

designated person means a person who conducts a business or undertaking that installs, constructs or commissions plant or a structure.

(2) Subject to this clause, the duties imposed on a designated person under section 26 of this Act do not apply to or in relation to the installation, construction or commissioning of any plant or structure if the designated person commenced (or commenced and completed) any process associated with the installation, construction or commissioning of the plant or structure before the relevant day.

(3) If a designated person commenced any process associated with the installation, construction or commissioning of any plant or structure before the relevant day but had not completed the installation, construction or commissioning by the second anniversary of the relevant day, then the designated person will, in relation to the installation, construction or commissioning of the plant or structure, cease to have the benefit of subclause (2) and the designated person must comply with the requirements of the Act in relation to the duties of a designated person (as if this Act had been in operation at the time that the designated person commenced this process).

18—Appointments

(1) On the relevant day—

(a) a person holding office as an inspector under the repealed Act will be taken to have been appointed as an inspector under this Act; and

(b) a person holding office as a health and safety representative or deputy health and safety representative under the repealed Act will be taken to hold the corresponding office under this Act (with a term of office corresponding to the balance of his or her term of office under the repealed Act); and

(c) a health and safety committee established under the repealed Act will be taken to be a health and safety committee under this Act (with the membership as constituted under the repealed Act).

(2) An identity card held by an inspector under or for the purposes of the repealed Act immediately before the relevant day will be taken to be an identity card furnished by the regulator under section 157 of this Act (and to comply with the requirements of section 157(1) in all respects).

(3) If a process or proceeding—

(a) to appoint a health and safety representative or deputy health and safety representative; or

(b) to establish or constitute a health and safety committee,

has been commenced (but not completed) under the repealed Act before the relevant day (including so as to constitute a work group), the process or proceeding (and any flow-on process or proceeding) may be completed under the repealed Act as if the repealed Act were still in operation and will then have effect for the purposes of this Act.

(4) Subclause (3)(a) will cease to apply at the expiration of 3 months after the relevant day (and any process or proceeding not completed after that period will need to be recommenced under this Act).

19—Training

(1) A person who has completed a course of training approved for the purposes of section 31A of the repealed Act will be taken to have completed any training required under section 85(6) or 90(4) of this Act.

(2) Subclause (1) will cease to apply at the expiration of 12 months after the relevant day (and any relevant course of training under the repealed Act will then cease to have effect for the purposes of this Act).

20—Members of committees

On the relevant day—

(a) a person holding office as a member of the SafeWork SA Advisory Committee under the repealed Act will be taken to be a member of the SafeWork SA Advisory Council under this Act and, subject to clause 3(2) or (3) of Schedule 2, will hold office for the balance of his or her term of office under the repealed Act (and will then be eligible for reappointment under this Act); and

(b) a person holding office as a member of the Mining and Quarrying Occupational Health and Safety Committee under the repealed Act will, subject to clause 12(6) of Schedule 2, continue to hold office for the balance of his or her term of office under the repealed Act (and will then be eligible for reappointment under this Act).

21—Functions and powers of inspectors

(1) An inspector may, on or after the relevant day, perform a function or exercise a power under this Act in relation to anything arising under or relevant to the repealed Act before the relevant day (and this Act will apply in relation to the performance or exercise of such a function or power as if a reference to this Act included a reference to the repealed Act).

(2) Without limiting subclause (1)—

(a) a reference in this Act to a contravention of this Act will be taken to include a reference to a contravention of the repealed Act; and

(b) a reference in this Act to an offence against this Act will be taken to include a reference to an offence against the repealed Act.

(3) Any action taken or information acquired under this Act (including on account of the operation of this clause) may be used for the purposes of the repealed Act (insofar as it may be relevant to an act, omission or circumstance occurring before the relevant day).

(4) Nothing in this clause affects or limits any action that may be taken under or with respect to the repealed Act by virtue of the operation of any other Act or law.

22—Disqualifications

A disqualification under section 30(4), (5), (6), (7) and (8) of the repealed Act (including a disqualification made by a review committee after the commencement of this Act) will have effect for the purposes of section 60 of this Act as if it were a disqualification under section 65.

23—Codes of practice

(1) A prescribed code of practice will be taken to be an approved code of practice under this Act (without the need to take any other step or to publish any notice under section 274).

(2) A prescribed code of practice under subclause (1) may be varied or revoked by the Minister in accordance with section 274 after the commencement of this clause.

(3) In this clause—

prescribed code of practice means an approved code of practice in force under section 63 of the repealed Act immediately before the relevant day brought within the ambit of this clause by the regulations.

24—Authorisations

(1) A registration, licence, permit, accreditation or other form of authorisation under a designated Act of a class prescribed by the regulations for the purposes of this clause will take and have effect under this Act in the manner prescribed by the regulations (and, to the extent prescribed by the regulations, will be taken to be a registration, licence, permit, accreditation or other form of registration under this Act).

(2) In this clause—

designated Act means—

(a) the repealed Act; or

(b) the *Dangerous Substances Act 1979*.

25—Exemptions

(1) Subject to this clause, an exemption in force under section 67 of the repealed Act immediately before the relevant day will continue in force for the purposes of this Act, or a corresponding provision of this Act, to an extent that corresponds to the extent of the exemption under the repealed Act.

(2) An exemption under subclause (1)—

(a) may be—

(i) modified from time to time as the Minister thinks fit; and

(ii) revoked at any time by the Minister; and

(b) unless sooner revoked, will expire on the first anniversary of the relevant day.

25A—Prosecutions under *Occupational Health, Safety and Welfare Act 1986*

(1) The Minister may, by instrument in writing, if he or she considers that it is in the interests of justice to do so, extend a time limit that applies under section 58(6)(b) of the repealed Act in order to allow proceedings to be brought against a person for an offence against the repealed Act in a case where proceedings previously commenced (or purportedly commenced) against the person for the offence have been withdrawn, discharged, dismissed or otherwise brought to an end because the person who brought (or purported to bring) the proceedings was not authorised to do so under section 58(7) of the repealed Act.

(2) In conjunction with the operation of subclause (1)—

(a) an extension under that subclause may be authorised even though the time limit for commencing proceedings under the repealed Act has passed; and

(b) proceedings may be commenced against a person on account of an extension under that subclause even though the person has already been the subject of proceedings (or purported proceedings) under the repealed Act with respect to the same matter (being proceedings (or purported proceedings) that have been withdrawn, discharged, dismissed or otherwise brought to an end before new proceedings are commenced on account of the extension).

(3) An apparently genuine document purporting to be signed by the Minister and to be an extension of a time limit applying under section 58(6)(b) of the repealed Act will be accepted in legal proceedings, in the absence of proof to the contrary, as proof of an extension in a particular case.

26—Other provisions

(1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

(3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

(4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule, apply to any amendment or repeal effected by this Act.

Legislative history

Notes

- This version is comprised of the following:

Part 1	1.9.2024
Part 2	1.7.2024
Part 3	27.6.2013
Part 4	27.6.2013
Part 5	1.9.2024
Part 6	1.7.2017
Part 7	1.9.2024
Part 8	1.9.2024
Part 9	27.6.2013
Part 10	1.7.2017
Part 11	1.7.2024
Part 12	1.9.2024
Part 13	1.12.2024
Part 14	1.7.2025
Schedules	1.9.2024

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Work Health and Safety Act 2012* repealed the following:

Occupational Health, Safety and Welfare Act 1986

Legislation amended by principal Act

The *Work Health and Safety Act 2012* amended the following:

Criminal Law (Sentencing) Act 1988

Dangerous Substances Act 1979

Environment Protection Act 1993

Mines and Works Inspection Act 1920

Tobacco Products Regulation Act 1997

Workers Rehabilitation and Compensation Act 1986

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2012	40	*Work Health and Safety Act 2012*	15.11.2012	1.1.2013: s 2
2013	24	*Work Health and Safety (Self-Incrimination) Amendment Act 2013*	27.6.2013	27.6.2013
2014	16	*Return to Work Act 2014*	6.11.2014	Sch 9 (cll 24, 26(1), (5) & 66)—2.2.2015; cll 25 & 26(2)—(4), (6)—(10)—1.7.2015 (*Gazette 4.12.2014 p6610*)
2015	6	*Work Health and Safety (Prosecutions Under Repealed Act) Amendment Act 2015*	21.5.2015	21.5.2015
2015	36	*Statutes Amendment (Industrial Relations Consultative Council) Act 2015*	5.11.2015	Pt 3 (ss 9—14)—19.11.2015 (*Gazette 19.11.2015 p4976*)
2016	63	*Statutes Amendment (South Australian Employment Tribunal) Act 2016*	8.12.2016	Pt 22 (ss 151—166)—1.7.2017 (*Gazette 16.5.2017 p1221*)
2017	18	*Summary Procedure (Indictable Offences) Amendment Act 2017*	14.6.2017	Sch 2 (cll 34 & 41)—5.3.2018 (*Gazette 12.12.2017 p4961*)
2017	46	*Work Health and Safety (Representative Assistance) Amendment Act 2017*	14.11.2017	14.2.2018: s 2
2019	25	*Statutes Amendment and Repeal (Simplify) Act 2019*	3.10.2019	Pt 53 (s 102)—3.10.2019: s 2(1)
2023	43	*Work Health and Safety (Industrial Manslaughter) Amendment Act 2023*	7.12.2023	7.12.2023 except ss 3 to 6, 7(1), 8 & 9—1.7.2024 (*Gazette 7.3.2024 p372*)
2024	2	*Statutes Amendment (Industrial Relations Portfolio) Act 2024*	29.2.2024	Pt 4 (ss 8 & 9)—28.3.2024 (*Gazette 28.3.2024 p510*)
2024	20	*Work Health and Safety (Review Recommendations) Amendment Act 2024*	13.6.2024	Pt 2 (ss 3 to 24) & Sch 1 (cll 2 to 6)—1.9.2024 (*Gazette 22.8.2024 p2871*)
2024	26	*Statutes Amendment (South Australian Employment Tribunal) Act 2024*	5.9.2024	Pt 6 (ss 57 & 58)—1.12.2024 (*Gazette 31.10.2024 p4038*)
2024	38	*Explosives Act 2024*	19.9.2024	Sch 1 (cl 3)—uncommenced
2024	**65**	***Statutes Amendment (Small Business Commission and Retail and Commercial Leases) Act 2024***	**5.12.2024**	**Pt 7 (s 98)—1.7.2025 (*Gazette 19.6.2025 p1865*)**

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under *Legislation Revision and Publication Act 2002*	27.6.2013
Pt 1		
Pt 1 Div 1		
s 2	*omitted under Legislation Revision and Publication Act 2002*	*27.6.2013*
Pt 1 Div 3		
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 43/2023 s 3(2)	1.7.2024
advisory committee	inserted by 20/2024 s 3(1)	1.9.2024
Advisory Council	*deleted by 36/2015 s 9(1)*	*19.11.2015*
authorising authority	amended by 63/2016 s 151(1)	1.7.2017
Consultative Council	*inserted by 36/2015 s 9(2)*	*19.11.2015*
	deleted by 20/2024 s 3(2)	*1.9.2024*
corresponding WHS law	amended by 38/2024 Sch 1 cl 3	uncommenced—not incorporated
industrial magistrate	*deleted by 63/2016 s 151(2)*	*1.7.2017*
employer organisation	substituted by 20/2024 s 3(3)	1.9.2024
Executive Director	amended by 20/2024 s 3(4)	1.9.2024
industrial manslaughter offence	inserted by 43/2023 s 3(1)	1.7.2024
Industrial Registrar	*deleted by 63/2016 s 151(3)*	*1.7.2017*
IRC	*deleted by 63/2016 s 151(4)*	*1.7.2017*
representative	substituted by 20/2024 s 3(5)	1.9.2024
RTWSA	inserted by 16/2014 Sch 9 cl 24(1)	2.2.2015
SAET	inserted by 63/2016 s 151(5)	1.7.2017
WorkCover	*deleted by 16/2014 Sch 9 cl 24(2)*	*2.2.2015*
s 4(2)—(4)	inserted by 43/2023 s 3(2)	1.7.2024
Pt 1 Div 4		
s 10		
s 10(4)	inserted by 20/2024 s 4	1.9.2024
Pt 1 Div 5	inserted by 20/2024 s 5	1.9.2024
Pt 2		
s 30A	inserted by 43/2023 s 4	1.7.2024

s 31		
heading	amended by 43/2023 s 5(1)	1.7.2024
s 31(1)	amended by 43/2023 s 5(2)	1.7.2024
Pt 5		
Pt 5 Div 3		
s 65		
s 65(1)	amended by 63/2016 s 152(1)	1.7.2017
s 65(3)	substituted by 63/2016 s 152(2)	1.7.2017
s 68		
s 68(4)	*amended by 36/2015 s 10*	*19.11.2015*
	deleted by 46/2017 s 4(1)	*14.2.2018*
s 68(6)	*deleted by 46/2017 s 4(2)*	*14.2.2018*
Pt 5 Div 6		
s 85		
s 85(2)	note inserted by 20/2024 s 6	1.9.2024
s 85A	inserted by 20/2024 s 7	1.9.2024
Pt 5 Div 7A	inserted by 20/2024 s 8	1.9.2024
Pt 6		
s 112		
s 112(1)	amended by 63/2016 s 153(1)	1.7.2017
s 112(2)	amended by 63/2016 s 153(2)	1.7.2017
s 112(3) and (5)	amended by 63/2016 s 153(3)	1.7.2017
s 114		
s 114(2) and (3)	amended by 63/2016 s 154	1.7.2017
Pt 7		
s 117		
s 117(3)	amended by 2/2024 s 8	28.3.2024
s 117(4)	amended by 2/2024 s 8	28.3.2024
s 117(5)	amended by 2/2024 s 8	28.3.2024
s 117(6)	amended by 2/2024 s 8	28.3.2024
	amended by 20/2024 s 9(1)—(3)	1.9.2024
s 118		
s 118(1)	amended by 20/2024 s 10(1)	1.9.2024
s 118(1a)—(1c)	inserted by 20/2024 s 10(2)	1.9.2024
s 118(2)	amended by 20/2024 s 10(3)	1.9.2024
	note inserted by 20/2024 s 10(4)	1.9.2024
s 143	amended by 20/2024 s 11(1)	1.9.2024
	note inserted by 20/2024 s 11(2)	1.9.2024
Pt 8		
s 152A	inserted by 20/2024 s 12	1.9.2024
Pt 9		
s 172	amended by 24/2013 s 3(1), (2)	27.6.2013
Pt 10		

s 215		
s 215(1)	amended by 63/2016 s 155	1.7.2017
Pt 11		
s 216		
s 216(2)	substituted by 43/2023 s 6	1.7.2024
s 220		
s 220(5)	*deleted by 63/2016 s 156*	*1.7.2017*
Pt 12		
s 223		
s 223(1a)	inserted by 20/2024 s 13	1.9.2024
s 229		
s 229(1)	amended by 63/2016 s 157(1)	1.7.2017
s 229(3)—(6)	*deleted by 63/2016 s 157(2)*	*1.7.2017*
Pt 13		
s 230		
s 230(3a)	inserted by 63/2016 s 158(1)	1.7.2017
s 230(4)	amended by 63/2016 s 158(2)	1.7.2017
	amended by 26/2024 s 57	1.12.2024
s 230(5)	substituted by 63/2016 s 158(3)	1.7.2017
s 230(6)	amended by 43/2023 s 7(1)	1.7.2024
s 230(7)	substituted by 63/2016 s 158(4)	1.7.2017
	amended by 18/2017 Sch 2 cl 34	5.3.2018
	amended by 43/2023 s 7(2)	7.12.2023
s 230(8)	substituted by 63/2016 s 158(4)	1.7.2017
s 230(10)—(12)	inserted by 43/2023 s 7(3)	7.12.2023
s 231		
s 231(1)	amended by 43/2023 s 8(1)	1.7.2024
	substituted by 20/2024 s 14(1)	1.9.2024
s 231(1a) and (1b)	inserted by 20/2024 s 14(1)	1.9.2024
s 231(2)	amended by 20/2024 s 14(2)	1.9.2024
s 231(2a)	inserted by 20/2024 s 14(3)	1.9.2024
s 231(3)	amended by 43/2023 s 8(2)	1.7.2024
	amended by 20/2024 s 14(4)	1.9.2024
s 232		
s 232(1)	amended by 20/2024 s 15	1.9.2024
s 232(3)	inserted by 43/2023 s 9	1.7.2024
s 254		
s 254(1)	amended by 20/2024 s 16(1), (2)	1.9.2024
s 255	amended by 63/2016 s 159	1.7.2017
s 258	amended by 63/2016 s 160	1.7.2017
s 259		
s 259(1)	amended by 63/2016 s 161	1.7.2017
s 260	amended by 20/2024 s 17	1.9.2024

s 260A	inserted by 20/2024 s 18	1.9.2024
s 262	amended by 63/2016 s 162	1.7.2017
	amended by 20/2024 s 19(1)	1.9.2024
s 262(1)	s 262 redesignated as s 262(1) by 20/2024 s 19(2)	1.9.2024
s 262(2)	inserted by 20/2024 s 19(2)	1.9.2024
s 263	amended by 63/2016 s 163	1.7.2017
Pt 14		
s 271A	inserted by 20/2024 s 20	1.9.2024
ss 272A and 272B	inserted by 20/2024 s 21	1.9.2024
s 274		
s 274(2)	amended by 36/2015 s 11(1)	19.11.2015
	amended by 20/2024 s 22	1.9.2024
s 274(3)	substituted by 36/2015 s 11(2)	19.11.2015
	amended by 20/2024 s 22	1.9.2024
	amended by 65/2024 s 98	**1.7.2025**
s 274(3a)	inserted by 36/2015 s 11(2)	19.11.2015
	amended by 20/2024 s 22	1.9.2024
s 274(6)	amended by 25/2019 s 102	3.10.2019
s 277		
s 277(2)	amended by 2/2024 s 9	28.3.2024
Sch 2		
Pt 1	*deleted by 36/2015 s 12(1)*	*19.11.2015*
Pt 2		
cl 12		
cl 12(2)	amended by 36/2015 s 12(2)	19.11.2015
	amended by 20/2024 s 23(1)	1.9.2024
cl 12(17)	amended by 20/2024 s 23(2)	1.9.2024
cl 13		
cl 13(1)	amended by 16/2014 Sch 9 cl 25	1.7.2015
cl 13(6)	amended by 36/2015 s 12(3)	19.11.2015
Sch 3		
cl 14	amended by 63/2016 s 164	1.7.2017
Sch 4	substituted by 63/2016 s 165	1.7.2017
Sch 5		
cl 1		
cl 1(1)	amended by 16/2014 Sch 9 cl 26(1)	2.2.2015
	amended by 36/2015 s 13	19.11.2015
	amended by 20/2024 s 24(1)	1.9.2024
cl 1(2)	amended by 16/2014 Sch 9 cl 26(2)	1.7.2015
cl 1(3)	substituted by 16/2014 Sch 9 cl 26(3)	1.7.2015
cl 2		
cl 2(1)	amended by 16/2014 Sch 9 cl 26(4)	1.7.2015

cl 2(3)	amended by 16/2014 Sch 9 cl 26(5)	2.2.2015
	amended by 16/2014 Sch 9 cl 26(4)	1.7.2015
cl 2(5)	amended by 16/2014 Sch 9 cl 26(5)	2.2.2015
cl 2(6)	amended by 16/2014 Sch 9 cl 26(5)	2.2.2015
	amended by 16/2014 Sch 9 cl 26(4), (6), (7)	1.7.2015
cl 2(7)	amended by 16/2014 Sch 9 cl 26(8)	1.7.2015
cl 2(10)	amended by 16/2014 Sch 9 cl 26(5)	2.2.2015
cl 2(11)	amended by 16/2014 Sch 9 cl 26(5)	2.2.2015
	amended by 16/2014 Sch 9 cl 26(4), (9)	1.7.2015
cl 2(12)	amended by 16/2014 Sch 9 cl 26(5)	2.2.2015
cl 3	*deleted by 16/2014 Sch 9 cl 26(10)*	*1.7.2015*
cl 3	inserted by 20/2024 s 24(2)	1.9.2024
Sch 6		
Pts 1—8	*omitted under Legislation Revision and Publication Act 2002*	*27.6.2013*
Pt 9		
cl 25A	inserted by 6/2015 s 3	21.5.2015

Transitional etc provisions associated with Act or amendments

Return to Work Act 2014, Sch 9 Div 10

66—Work health and safety administration costs

(1) In this clause—

WHS Act means the *Work Health and Safety Act 2012*.

(2) The prescribed percentage of the prescribed amount under Schedule 5, clause 2(7) and (8) of the WHS Act (as amended by this Act) for the 2015/2016 financial year must be at least equal to the total of the prescribed percentage of the prescribed amount under Schedule 5, clause 2(7) and (8) of the WHS Act for the 2014/2015 financial year and the amount payable under Schedule 5, clause 3 of the WHS Act for the 2014/2015 financial year (and if a regulation is not made under Schedule 5, clause 2(7) or (8) of the WHS Act (as amended by this Act) for the 2015/2016 financial year then the total amount described in this subclause will apply under that clause).

Statutes Amendment (Industrial Relations Consultative Council) Act 2015

14—Transitional provision

A member of the SafeWork SA Advisory Council established under the *Work Health and Safety Act 2012* ceases to hold office on the commencement of this section.

Statutes Amendment (South Australian Employment Tribunal) Act 2016

166—Transitional provisions

(1) In this section—

principal Act means the *Work Health and Safety Act 2012*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Employment Tribunal.

(2) A decision, direction or order of the Industrial Relations Court of South Australia or a review committee under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.

(3) A right to make any application, or to seek a review, or lodge an appeal under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Industrial Relations Court of South Australia or a review committee, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.

(4) Any proceedings before the Industrial Relations Court of South Australia or a review committee under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.

(5) The Tribunal may—

(a) receive in evidence any transcript of evidence in proceedings before the Industrial Relations Court or a review committee, and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or determinations of the Industrial Relations Court or a review committee that may be relevant to proceedings before the Tribunal; and

(c) adopt or make any decision (including a decision in the nature of a permission), direction or order in relation to proceedings before the Industrial Relations Court or a review committee before the relevant day (including so as to make a decision or give a permission, direction or order, in relation to proceedings fully heard before the relevant day); and

(d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

Summary Procedure (Indictable Offences) Amendment Act 2017, Sch 2 Pt 14

41—Transitional provision

The amendments made by this Act apply to proceedings relating to an offence that are commenced after the commencement of this Act, regardless of when the offence occurred (and the Acts amended by this Act, as in force before the commencement of this Act, continue to apply to proceedings that were commenced before the commencement of this Act).

Work Health and Safety (Industrial Manslaughter) Amendment Act 2023, Sch 1

1—Transitional and saving provisions

(1) Section 230 of the *Work Health and Safety Act 2012* (as amended by section 7(3) of this Act) will be taken to apply in relation to an information containing a charge of—

(a) a major indictable offence against the *Criminal Law Consolidation Act 1935* or any other Act; and

(b) a summary or minor indictable offence against the *Work Health and Safety Act 2012*,

laid before the commencement of this clause (and to avoid doubt, section 6A(3) of the *South Australian Employment Tribunal Act 2014* will be taken not to apply in relation to the offences referred to in paragraph (b)).

(2) Despite section 230(7) of the *Work Health and Safety Act 2012* (as in force immediately prior to the commencement of section 7(2) of this Act) committal proceedings for a minor indictable offence referred to in subclause (1)(b) may be conducted in the Magistrates Court in accordance with the *Criminal Procedure Act 1921*.

Work Health and Safety (Review Recommendations) Amendment Act 2024, Sch 1 Pt 2—Transitional provisions

2—Interpretation

In this Schedule—

principal Act means the *Work Health and Safety Act 2012*.

3—Notices under new Part 5 Division 7A

A notice may only be given to SAET under Part 5 Division 7A of the principal Act (as inserted by this Act) in respect of a WHS matter (within the meaning of that Division) arising after the commencement of that Division.

4—Applications to SAET under new section 260A

An application may only be made to SAET under section 260A of the principal Act (as inserted by this Act) in respect of an issue or alleged contravention occurring after the commencement of that section.

5—Executive Director

The person who was, immediately before the commencement of section 24(2) of this Act, the Executive Director under the principal Act will, on the commencement of that subsection, be taken to have been appointed as the Executive Director under Schedule 3 clause 3 of the principal Act (as in force after the commencement of section 24(2) of this Act) for the remainder of their term of office (and subject to the same terms and conditions of appointment).

6—Review

(1) The Minister to whom administration of the principal Act is committed must cause a review of the amendments effected by this Act to be conducted.

(2) The review must—

(a) be commenced 2 years after the commencement of this clause and be completed within a period of 6 months; and

(b) include an assessment of the following matters:

(i) the extent to which amendments have contributed to improved health and safety of workers and workplaces;

(ii) the extent to which there has been an improvement in communication between the regulator and parties affected by workplace incidents, including victims and their families;

(iii) the extent to which dispute resolution processes have assisted in the settlement of disputes over health and safety issues;

(iv) any other matter the Minister considers to be relevant to the review.

(3) A report on the results of the review must be provided to the Minister and the Minister must—

(a) cause a copy of the report to be laid before each House of Parliament within 12 sitting days after receiving the report; and

(b) publish a copy of the report on a website determined by the Minister.

Statutes Amendment (South Australian Employment Tribunal) Act 2024

58—Transitional provision

Section 230(4) of the *Work Health and Safety Act 2012*, as amended by section 57 of this Act, applies in relation to proceedings commenced in the South Australian Employment Court after the commencement of section 57 of this Act.

Historical versions

27.6.2013
2.2.2015
21.5.2015
1.7.2015
19.11.2015
1.7.2017
14.2.2018
5.3.2018
3.10.2019
7.12.2023
28.3.2024
1.7.2024
1.9.2024
1.12.2024