NORTHERN TERRITORY OF AUSTRALIA

WORKPLACE HEALTH AND SAFETY ACT

As in force at 1 March 2011

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 March 2011. Any amendments that commence after that date are not included.

WORKPLACE HEALTH AND SAFETY ACT

An Act to promote health and safety in the workplace and for other purposes

Part 1 Preliminary

1 Short title

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

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Objects of Act

The objects of this Act are:

(a) to achieve for the Territory the highest possible standards of occupational health and safety; and

(b) to achieve as far as possible elimination of avoidable risks, and control and mitigation of unavoidable risks, to the health or safety of workers; and

(c) to make workplaces safe not only for workers but also for others; and

(d) to encourage cooperation through consultation between employers and workers, and associations of employers and workers:

(i) in developing and implementing measures to improve occupational health and safety; and

(ii) in achieving progressive improvement in standards and performance in occupational health and safety; and

(e) to achieve a consistent, properly coordinated, and coherent approach to occupational health and safety in the Territory; and

(f) to promote community knowledge, awareness and understanding of the nature and importance of issues affecting occupational health and safety.

4 Definitions

In this Act:

appointed member, of the Council, means a member other than the Executive Director.

approved means approved by the Authority.

authorised investigation, see section 17(2).

Authority means the Work Health Authority.

business means:

(a) an industrial or commercial undertaking or activity (whether carried on for profit or on a not-for-profit basis); or

(b) an undertaking or activity of government or local government.

Chair, of the Council, includes the Deputy Chair while acting as the Chair.

company includes any body corporate.

conviction includes a formal finding of guilt made by a court without proceeding to a conviction.

Council means the Workplace Health and Safety Advisory Council.

Court means the Work Health Court.

Note

This definition operates only for the purposes of provisions in which Court appears with a capitalised "C" in the statutory text, i.e. sections 79, 91 and 92. In other provisions, a reference to a court is (according to context) a reference to a court of civil or criminal jurisdiction (or both).

employer means a person who carries on a business (whether or not workers engaged in the business are or include employees).

enforcement notice means:

(a) an improvement notice; or

(b) a prohibition notice; or

(c) a stop work notice.

Executive Director means the person appointed by the Minister, and for the time being holding the appointment, as Executive Director of NT WorkSafe and includes a person acting in that position.

hazard means a source of risk.

hazardous activity means an activity classified by the regulations as a hazardous activity.

health and safety representative means a worker elected as a health and safety representative under section 36.

improvement notice, see section 75.

injury includes an impairment of health.

jurisdiction means the Commonwealth, a State or Territory of the Commonwealth, or a foreign state or body politic.

notice means a written notice.

occupier, of a workplace, means a person who has the management and control of the workplace.

officer means, according to context:

(a) a workplace safety officer; or

(b) an officer of a company or organisation.

Note

For the meaning of an officer of a company, see Corporations Act 2001.

owner, of a workplace or of workplace infrastructure or equipment, includes an agent of the owner with powers of management and control.

prohibition notice, see section 76.

reasonably practicable, see section 5.

related Act means an Act, other than this Act, administered by the Authority.

reportable incident, see section 64.

respondent, to an enforcement notice, means the person against whom the enforcement notice is issued and, if that person is not the employer, includes the employer.

risk management measure means a measure for the elimination or mitigation of risk.

serious risk – a risk is a serious risk if a reasonable worker would discontinue work in which the worker was exposed to the risk until appropriate measures had been taken to eliminate or mitigate the risk.

significant injury means an injury requiring medical treatment.

small employer means an employer whose total workforce consists of less than 10 workers.

stop work notice, see section 77.

substance includes a natural or artificial substance in solid, liquid or gaseous form.

worker means:

(a) any person who works in the employer's business:

(i) as an employee; or

(ii) as an apprentice or person undergoing on-the-job training; or

(iii) as a contractor or sub-contractor; or

(iv) as an employee of a contractor or sub-contractor; or

(v) as an employee of a labour hire company who has been assigned to work for the employer; or

(vi) as a volunteer; or

(vii) in any other capacity;

(b) if the employer is a natural person who works in the employer's business – the employer him/herself.

workplace safety officer means a person holding an appointment as a workplace safety officer under section 15 and includes the Executive Director.

workplace infrastructure or equipment includes:

(a) movable or immovable structures at the workplace;

(b) machinery, appliances, tools and other equipment.

workplace materials means materials or substances used, or encountered, in the course of work.

work-related accident means a situation or event occurring at a workplace, or arising out of a worker's work, that results in death or significant injury.

Note

The maximum penalties fixed in this Act are the penalties applicable to an individual. The maximum penalty for a body corporate is a monetary penalty equal to 5 times the maximum monetary penalty for an individual. (See section 38DB of the Interpretation Act.)

5 Meaning of reasonably practicable

The question whether particular risk management measures are ***reasonably practicable*** is to be decided with regard to:

(a) the likelihood that the risk could result in injury; and

(b) the seriousness of any injury that could result from realisation of the risk; and

(c) the availability, suitability, effectiveness and cost of the measures; and

(d) any other relevant factors.

6 Act to bind the Territory and other jurisdictions

This Act binds:

(a) the Territory and its instrumentalities; and

(b) all other jurisdictions and their instrumentalities.

Part 2 Administration

Division 1 Work Health Authority

7 Work Health Authority continues

The Work Health Authority continues.

8 Constitution of Authority

(1) The Authority is a body corporate constituted of the Executive Director.

(2) The Authority:

(a) has the capacity to acquire or incur, in its corporate name, any rights or obligations that may properly attach to a body corporate; and

(b) has the functions and powers conferred by this Act and any other Act.

(3) The Authority has a common seal.

(4) A document that appears to be genuine, and to bear the common seal of the Authority, will be presumed, in the absence of proof to the contrary, to have been duly executed by the Authority.

9 Functions and powers of Authority

(1) The functions of the Authority are as follows:

(a) to administer and enforce this Act;

(b) to provide advice to employers, workers and others on their rights and obligations under this Act;

(c) to encourage co-operation between employers, workers and others to achieve progressive improvement in standards of occupational health and safety;

(d) to monitor standards of occupational health and safety in the Territory and to develop and recommend proposals for their improvement;

(e) to carry out any other functions assigned to it under this or any other Act.

(2) The Authority has all powers reasonably necessary for effectively carrying out its functions.

(3) The Authority may, by instrument in writing, delegate any of its powers or functions.

10 Ministerial control

The Authority is subject to the Minister's control and direction.

Division 2 Inquiries

11 Authority's power to conduct inquiry

The Authority may inquire into a work-related accident or any other matter relevant to the administration of this Act or a related Act.

Note

The inquiry might be conducted by the Authority itself or by a person or committee to which the Authority has delegated its powers of inquiry under this Division.

12 Authority's powers of inquiry

(1) For the purposes of an inquiry, the Authority may, by notice, require a person (the ***witness***):

(a) to provide written answers to specified questions, or other specified written information, within a time stated in the notice; or

(b) to produce specified materials to the Authority within a time stated in the notice; or

(c) to attend at a specified time and place for examination on a specified subject.

(2) The notice may require the witness to verify written answers to questions, or other specified written information, by statutory declaration.

(3) A notice requiring the witness to attend for examination may require the witness to bring and produce at the inquiry any material in the witness's possession or control relating to the subject of the examination.

13 Conduct of examination

(1) When a witness attends for examination, the Authority may require a witness to do any 1 or more of the following:

(a) to take an oath to answer all questions truthfully;

(b) to answer a question relevant to the examination asked by any person present at the examination;

(c) to produce at the examination any relevant material in the witness's possession or control.

(3) The Authority may reimburse reasonable travelling expenses actually incurred by a witness who attends for examination before the Authority.

(4) The Authority may have a written transcript or audio recording (or both) made of oral evidence.

(5) The written transcript or audio recording (or both) are, if the evidence is relevant to proceedings for an offence, admissible in those proceedings.

14 Non-compliance with notice or requirement

A person must not, without reasonable excuse, refuse or fail to comply with a notice or requirement under this Division.

Maximum penalty: 100 penalty units.

Division 3 Workplace safety officers

15 Workplace safety officers

(1) The Authority may appoint workplace safety officers.

(2) An appointment may be made on terms and conditions specified in the instrument of appointment.

(3) The Executive Director is also a workplace safety officer.

16 Identity cards for workplace safety officers

(1) The Authority must issue each workplace safety officer with an identity card:

(a) containing the officer's name and a photograph of the officer; and

(b) stating that the person whose name and photograph appear on the card is a workplace safety officer.

(2) The officer must, at the reasonable request of a person, produce the officer's identity card for inspection.

17 Functions of workplace safety officer

(1) The functions of workplace safety officers are:

(a) to carry out authorised investigations; and

(b) to give advice to employers and workers about how best to comply with their obligations under this Act and on other questions relevant to their rights and obligations under this Act or a related Act.

(2) An ***authorised investigation*** is an investigation for 1 or more of the following purposes:

(a) to monitor compliance with this Act or a related Act;

(b) to investigate a work-related accident or a situation that could lead to a work-related accident;

(c) to audit records required to be kept under this Act or a related Act;

(d) to gather information or evidence relevant to:

(i) an application or other administrative proceeding under this Act or a related Act; or

(ii) a suspected offence against this Act or a related Act: or

(iii) civil or criminal proceedings under this Act or a related Act.

Division 4 Confidential information

18 Duty to preserve confidentiality

(1) A person employed or engaged, or formerly employed or engaged, in duties related to the administration of this Act or a related Act must not disclose information acquired in the course of that employment or engagement except as reasonably required for the administration of this Act or the related Act.

Maximum penalty: 500 penalty units or imprisonment for 2 years.

(2) However, this section does not prevent the disclosure of information if:

(a) the disclosure is made to an agency responsible for the administration of legislation dealing with occupational health and safety in some other Australian jurisdiction; or

(b) the disclosure is made to a person involved in the administration or management of a fire or emergency service for a purpose related to the safety of workers or the public generally; or

(c) the disclosure is made to a law enforcement agency; or

(d) the disclosure is required by a court or an administrative authority with power to compel disclosure of information; or

(e) the information is already in the public domain.

(3) This section extends to an authorised union OH&S representative.

19 Authority's power to disclose

(1) If the Authority decides that confidential information should be disclosed in the public interest, the Authority may notify the person to whom the information relates of that decision.

(2) The Authority may disclose the information if:

(a) 10 days elapse from the date of the notification and no application for review of the decision is made within that period; or

(b) the Authority's decision to release the information is confirmed on review or, if there is an appeal, on the appeal.

Division 5 Immunity from liability

20 Immunity from liability

(1) The Authority, a workplace safety officer, or other person engaged in the administration of this Act incurs no civil or criminal liability for an act or omission, in good faith, and in the exercise or purported exercise of powers or functions under this Act.

(2) A civil liability that would, but for subsection (1) attach to the Authority, an officer or other person, attaches instead to the Territory.

Part 3 Workplace Health and Safety Advisory Council

21 Workplace Health and Safety Advisory Council

The Workplace Health and Safety Advisory Council is established.

22 Functions of the Council

The Council has the following functions:

(a) to keep the operation of this Act under review;

(b) to make recommendations to the Minister on possible improvements to the administration of this Act, or standards of occupational health and safety in the Territory;

(c) to carry out investigations, at the request of the Minister, into matters relevant to occupational health and safety and to report to the Minister on the results of the investigations;

(d) to carry out any other functions assigned to it under this Act.

23 Membership of Council

(1) The Council consists of:

(a) the Executive Director; and

(b) not more than 10 other members appointed by the Minister.

(2) The membership of the Council must:

(a) include members with a wide range of experience extending as far as possible across all major industry sectors in the Territory; and

(b) include representatives of organisations representing employers, and representatives of organisations representing employees, in equal or approximately equal numbers.

(3) Before making an appointment to the Council, the Minister must:

(a) invite recommendations for appointment to the Council from interested organisations and persons; and

(b) consider all recommendations made in response to the notice.

(4) The invitation must be published in the *Gazette* and in any other way the Minister considers appropriate.

24 Terms and conditions of appointment

(1) The term of appointment for an appointed member of the Council is to be a term, not exceeding 2 years, specified in the instrument of appointment.

(2) An appointed member is, at the end of a term of appointment, eligible for re-appointment.

(3) A person ceases to be an appointed member of the Council if the person:

(a) resigns by notice of resignation given to the Minister; or

(b) comes to the end of a term of appointment and is not re-appointed; or

(c) is removed from office by the Minister under subsection (4).

(4) The Minister may remove an appointed member of the Council from office if the member:

(a) is absent, without the Minister's permission, from 3 consecutive meetings of the Council; or

(b) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(c) becomes physically or mentally incapable of satisfactorily carrying out the duties of a member of the Council; or

(d) is guilty of misbehaviour.

25 Chair and Deputy Chair

(1) The Chair of the Council is to be an appointed member of the Council appointed by the Minister to be the Chair.

(2) The Minister may appoint another appointed member of the Council to be the Deputy Chair.

(3) If the Chair is absent or unavailable to carry out official functions, the Deputy Chair is to act as Chair.

(4) A reference to the Chair extends, while the Deputy Chair is acting as Chair, to the Deputy Chair.

26 Meetings of Council

(1) Meetings of the Council are convened by the Chair.

(2) A meeting of the Council must be convened:

(a) whenever the Chair considers a meeting necessary to deal with the Council's business; and

(b) whenever the Minister directs the Chair to convene a meeting.

(3) The Chair must preside at all meetings of the Council.

(4) At a meeting of the Council:

(a) a quorum consists of the Chair and at least one-half the total number of the other members; and

(b) questions arising for decision are determined by majority vote and, if the votes are equal, the Chair has a casting vote as well as a deliberative vote; and

(c) the Council determines, subject to this Act, its own procedures.

(5) The Council must keep records of its proceedings.

27 Council subcommittees

(1) The Council may establish such subcommittees as the Council considers necessary to assist it in carrying out its functions under this Act.

(2) A subcommittee may consist entirely of Council members, partly of Council members and partly of members drawn from outside the Council, or entirely of members drawn from outside the Council.

(3) The terms and conditions of appointment of a member of a subcommittee are to be determined by the Minister.

(4) The procedures of a subcommittee are, subject to any direction by the Council, to be as determined by the subcommittee.

28 Annual report of Council

(1) The Council must submit a report to the Minister for each financial year.

(2) The report must cover the work of the Council and its subcommittees for the relevant financial year.

(3) The report must be submitted on or before 30 September of the calendar year in which the financial year ends.

(4) The Minister must table the report in the Legislative Assembly within 6 sitting days after receiving the report.

Part 4 Consultation and worker representation

Division 1 Duties of employer and worker in regard to consultation

29 Objects of this Division

The objects of this Division are:

(a) to ensure that relevant information about occupational health and safety is shared between employers and workers; and

(b) to ensure that workers are given the opportunity to express their views on, and to contribute to the resolution of, occupational health and safety issues at the workplace; and

(c) to ensure that the views of workers are valued and taken into account by the employer.

30 Duty to consult

An employer must consult with workers to enable the workers to contribute to the making of decisions affecting their health or safety at work.

Examples of issues on which an employer is required to consult

1 The identification of risks.

2 The appropriate risk management measures to be adopted at a workplace.

3 The facilities to be provided at a workplace for the health and safety of workers (including the provision to be made for first aid).

4 Monitoring the health of workers and their fitness for work.

5 The provision of information and training for workers.

6 Changes to work practices or the workplace that may have an impact on health and safety.

31 When and how consultation is to take place

(1) Consultation is required:

(a) when risks to health and safety arising from work are assessed or when the assessment of those risks is reviewed; and

(b) when decisions are made about the measures to be taken to eliminate or control those risks; and

(c) when introducing or altering the procedures for monitoring those risks (including health surveillance procedures); and

(d) when decisions are made about the adequacy of facilities for the health or safety of workers; and

(e) when changes that may affect occupational health or safety are proposed to the workplace, workplace infrastructure or equipment, substances used in the course of work, or the systems or methods of work; and

(f) when decisions are made about the procedures for consultation; and

(g) in any other case prescribed by regulation.

(2) Consultation may take place in 1 or more of the following ways:

(a) with a health and safety committee representing the workers;

(b) with a health and safety representative representing the workers;

(c) in accordance with other arrangements agreed between the employer and the workers.

(3) The employer's duty to consult does not justify a failure to implement, or delay in implementing, necessary risk management measures.

32 Worker's reciprocal duty in regard to consultation

A worker:

(a) must participate in consultation initiated by the employer and must be prepared to contribute the worker's own insights to that consultation; and

(b) must be open to suggestions made by the employer on health and safety issues; and

(c) must bring to the employer's attention aspects of a particular work practice, or particular work, that appear to the worker to give rise to a risk to health or safety.

Division 2 Constitution of work groups

33 Work groups

(1) A ***work group*** is a group of 10 or more workers constituted as a work group under this Division.

(2) A work group consists of:

(a) all the workers of a particular employer, or of 2 or more employers; or

(b) all the workers of a particular employer, or of 2 or more employers, at a particular workplace.

(c) a particular class of workers of a particular employer, or of 2 or more employers; or

(d) a particular class of workers of a particular employer, or of 2 or more employers, at a particular workplace.

(3) The same worker cannot simultaneously be a member of 2 or more different workgroups.

(4) The workers of a small employer cannot be members of a workgroup unless the employer agrees.

34 Formation of workgroup

(1) An employer may at any time start negotiations for the formation of a workgroup.

(2) Subject to the regulations, an employer (other than a small employer) must at the request of a worker start negotiations for the formation of a workgroup.

(3) A workgroup is formed by agreement between the employer or employers concerned and the workers who are to be members of the proposed workgroup.

(4) The agreement is to be sought, negotiated and evidenced as required by the regulations.

(5) If an employer fails to start negotiations within 1 month after being asked to do so under subsection (2), or if negotiations do not result in the formation of a workgroup within 3 months after being started, the employer or a worker who is prospective member of the workgroup may, subject to the regulations, apply to the Authority for assistance in resolving the constitution of the workgroup.

(6) On an application under subsection (5), the Authority may take any action it considers appropriate to resolve questions in issue and may itself decide how the workgroup is to be constituted and establish the workgroup.

35 Sharing of costs where there are multiple employers for a single work group

If a single work group consists of the workers of 2 or more employers, any costs and expenses of a health and safety representative that are to be borne by an employer under this Part are to be apportioned between the employers as agreed between them or, in default of agreement, equally.

Division 3 Election of health and safety representatives

36 Election of health and safety representative

(1) A work group may, in accordance with the relevant regulations, elect a health and safety representative.

(2) The health and safety representative:

(a) must be a member of the work group; and

(b) cannot be a person who is disqualified from holding office as a health and safety representative.

37 Term of office etc. of health and safety representative

(1) A health and safety representative is elected for a term of 2 years.

(2) A person ceases to hold office as a health and safety representative if:

(a) the person's term of office comes to an end and the person is not re-elected; or

(b) the person ceases to be a member of the relevant work group; or

(c) the Authority disqualifies the person from office as a health and safety representative; or

(d) the person resigns by notice given to the employer; or

(e) the members of the relevant work group agree to terminate the person's term of office.

(3) The Authority may, on application by an employer, disqualify a person from office as a health and safety representative if satisfied that the person has misused powers as a health and safety representative.

Division 4 Functions and powers of health and safety representative

38 Functions of health and safety representative

(1) The functions of a health and safety representative are:

(a) to inquire into health and safety issues affecting workers; and

(b) to assist workers in their dealings with management and workplace safety officers on health and safety issues; and

(c) to ensure that matters of concern to workers on health and safety issues are brought to the attention of management; and

(d) to mediate between workers and management on health and safety issues; and

(e) to assist in the resolution of problems affecting the health or safety or workers; and

(f) to issue a notice of safety hazard in appropriate circumstances; and

(g) to issue a direction to a worker to stop work in a case of serious and immediate risk to the health or safety of the worker.

(2) The functions of a health and safety representative are confined to health and safety issues affecting members of the relevant work group.

39 Gathering of information by health and safety representative

(1) An employer must, at the request of a health and safety representative, make available to the representative information in the employer's possession, or reasonably accessible by the employer, on health and safety issues affecting the members of the relevant work group.

Maximum penalty: 100 penalty units.

(2) However, an employer must not disclose confidential information about the state of health of a particular worker unless the worker consents.

(3) An employer must inform a health and safety representative of any reportable incident that occurs at the workplace.

Maximum penalty: 100 penalty units.

40 Issue of notice of safety hazard

(1) If a health and safety representative believes on reasonable grounds that:

(a) a hazardous situation exists at a workplace; and

(b) in consequence an offence has been, or is about to be, committed against this Act;

the health and safety representative may issue a notice of safety hazard.

(2) The notice may be issued to the employer or a worker or other person who is responsible for the hazardous situation.

(3) The notice must:

(a) be in an approved form; and

(b) identify the hazard; and

(c) state the action that, in the health and safety representative's opinion needs to be taken to eliminate or mitigate the hazard; and

(d) state a period (at least 7 days) within which the action is to be taken.

(4) If the hazard is not eliminated, or mitigated to the satisfaction of the health and safety representative, within the time allowed in the notice, the health and safety representative must report the matter to the Authority.

(5) On receiving a report under subsection (4), the Authority must arrange for the investigation of the matter by a workplace safety officer.

(6) If the workplace safety officer finds, on investigation, that an unacceptable risk to the health or safety of a worker exists, the workplace safety officer, or the Authority, will take any action that appears necessary to eliminate or mitigate the hazard.

41 Issue of stop work direction

(1) If a health and safety representative believes on reasonable grounds that a worker is exposed to a serious and immediate risk to the worker's health or safety, the health and safety representative may direct the worker to stop work.

(2) The health and safety representative must immediately notify the employer of a direction under this section.

(3) A direction under this section is not binding on the worker or the employer, but if the worker acts, or the employer directs the worker to act, contrary to the direction, the health and safety representative must report the matter to the Authority.

(4) On receiving a report under subsection (3), the Authority must arrange for the investigation of the matter by a workplace safety officer who will take any action that appears necessary in the circumstances.

Division 5 Employers' obligations to health and safety representatives

42 Training obligations

(1) An employer must, on request by a health and safety representative:

(a) allow the representative to attend an appropriate approved course of training for health and safety representatives; and

(b) allow the representative the necessary time off work to attend the course on full pay; and

(c) pay reasonable costs associated with the representative's attendance at the course.

(2) An employer is not obliged to comply with such a request from the same representative more than once in each year.

(3) The course of training must be a course:

(a) conducted or approved by the Authority; and

(b) agreed as appropriate by the employer and the representative or, in default of agreement, determined to be appropriate by the Authority.

(4) If an employer fails to comply with the employer's obligations under this section, the employer is guilty of an offence.

Maximum penalty: 20 penalty units.

43 Other obligations

(1) An employer must facilitate the reasonable and effective exercise by a health and safety representative of the representative's functions in the following ways:

(a) the employer must allow the representative access to any part of a workplace in which a member of the relevant work group works;

(b) the employer must, at the representative's request, make available to the representative information in the employer's possession, or reasonably accessible by the employer, on health and safety issues affecting the members of the relevant work group;

(c) if a worker wants the representative to be present at, and to participate in, an interview on a health and safety issue between the worker and the employer, a representative of management, or a workplace safety officer, the employer must permit the representative's presence at, and participation in, the interview;

(d) the employer must treat time reasonably spent in carrying out functions as a health and safety representative during ordinary hours of work as time spent at work attracting remuneration at the representative's ordinary rate of pay;

(e) the employer must provide any other assistance or facilities required by the regulations.

(2) An employer must not provide information about the health of an individual worker under subsection (1)(b) without the worker's consent.

(3) An employer who fails to comply with this section is guilty of an offence.

Maximum penalty: 100 penalty units.

44 List of representatives to be kept

(1) An employer must keep a record of all health and safety representatives.

(2) An employer must display a current list of health and safety representatives at every workplace under the employer's control.

(3) An employer who fails to comply with this section commits an offence.

Maximum penalty: 20 penalty units.

Division 6 Health and safety committees

45 Health and safety committee

(1) An employer with a workforce of at least 20 workers at a particular workplace must, if requested by a majority of the workers or a health and safety representative, establish a health and safety committee for the workplace within 3 weeks of the date of the request.

(2) A health and safety committee will consist of:

(a) workers working at the workplace elected by the workers working at the workplace; and

(b) if there is a health and safety representative for the workplace – the health and safety representative; and

(c) persons appointed to the committee by the employer.

(3) The number of workers to be elected to the committee must be as agreed between the employer and the workers, but it must be at least equal to the number of persons appointed to the committee by the employer.

(4) An occupational health and safety committee must meet at least quarterly or at more frequent intervals approved by the employer.

(5) Subject to the regulations, an occupational health and safety committee may determine its own procedures.

46 Functions of health and safety committee

The functions of a health and safety committee are as follows:

(a) to facilitate consultation and cooperation between the employer and workers in initiating, developing and implementing measures designed to ensure the health and safety of the workers at the workplace;

(b) to keep itself informed about standards of health and safety generally recommended for, or prevailing at, workplaces of a comparable nature, and to review and make recommendations to the employer on rules and procedures at the workplace affecting the health and safety of the workers;

(c) to recommend to the employer the establishment, maintenance and monitoring of programs, measures and procedures at the workplace relating to the health and safety of the workers;

(d) to keep, in an accessible place and form, information about the hazards to workers that exist or may arise at the workplace;

(e) to consider, and make recommendations about, changes to be made at the workplace that may affect the health and safety of the workers;

(f) to consider, and make recommendations about, training and education in, and promotion of, health and safety at the workplace;

(g) to consider, and make recommendations about, changes to be made at the workplace following an accident or reportable incident;

(h) to perform other functions assigned to the committee under the regulations or (with the committee's consent) by the employer.

47 Duties of employer to health and safety committee

If there is a health and safety committee for a workplace, the employer must:

(a) permit the committee, or a member of the committee nominated by the committee for the purpose, to inspect any part of the workplace at any reasonable time; and

(b) make available to the committee information reasonably available to the employer about:

(i) hazards that exist or may arise at the workplace; and

(ii) the health and safety of workers at the workplace; and

(c) consult with the health and safety committee on proposed changes at the workplace that may affect the health or safety of workers at the workplace; and

(d) where an accident or reportable incident occurs at the workplace – ensure the committee is notified as soon as possible; and

(e) provide the committee with reasonable facilities and assistance for carrying out its functions under this Act; and

(f) permit members of the committee to carry out their functions and to participate in relevant courses of training in occupational health and safety.

48 Exemption from requirement to have health and safety committee of Division

If the Authority is satisfied that an employer has implemented a health and safety management policy that gives effect to the objects of this Division, the Authority may, on conditions the Authority thinks appropriate, exempt the employer from the obligation to appoint a health and safety committee under this Division.

Division 7 Authorised union OH&S representatives

49 Objects of this Division

The objects of this Division are as follows:

(a) to establish a framework that balances:

(i) the right of employee organisations to represent their members in matters concerning occupational health and safety, to discuss such matters with workers who are, or are eligible to become, members of the organisations and to investigate suspected contraventions of laws, affecting their members, concerning occupational health and safety; and

(ii) the right of employers and others to conduct their businesses without undue interference or harassment;

(b) to ensure that the rights conferred on representatives of employee organisations are confined to representatives who understand their rights and obligations under this Division and who are fit and proper persons to exercise those rights;

(c) to ensure that the rights of employers and others who could be adversely affected by misuse of those rights are clearly defined;

(d) to ensure that rights conferred on representatives of employee organisations under this Division are withdrawn in the event of misuse.

50 Appointment of authorised union OH&S representatives

(1) The Authority may, on application by an employee organisation, appoint an officer or employee of the organisation as an authorised union OH&S representative.

(2) Before making the appointment, the Authority must be satisfied that the prospective appointee:

(a) has qualifications and experience appropriate to a person holding an appointment as an authorised union OH&S representative; and

(b) is a fit and proper person to hold the appointment.

(3) The appointment will be for a term of appointment (not exceeding 2 years) stated in the instrument of appointment.

(4) The appointment will be made on the following conditions:

(a) that the authorised union OH&S representative will not enter a workplace except in accordance with this Division;

(b) that the authorised union OH&S representative will comply with any relevant obligations imposed under the law of the Commonwealth;

(c) that the authorised union OH&S representative will not intentionally hinder or obstruct an employer or a worker;

(d) that the authorised union OH&S representative will not misrepresent the extent of the representative's authority;

(e) that the authorised OH&S representative will not use or disclose information acquired at the workplace for a purpose not reasonably connected with the health and safety of a worker;

(f) such other conditions as the Authority thinks fit to impose.

(5) An authorised union OH&S representative must not contravene a condition of appointment.

Maximum penalty: 100 penalty units.

(6) A person must not refuse or unduly delay entry to premises by an authorised union OH&S representative who is entitled to enter the premises.

Maximum penalty: 100 penalty units.

51 Identity cards for authorised union OH&S representatives

(1) The Authority must issue an authorised union OH&S representative with an identity card:

(a) containing the representative's name and a photograph of the representative; and

(b) stating the name of the employee organisation represented by the representative; and

(c) stating that the representative is an authorised union OH&S representative.

(2) The authorised union OH&S representative must, at the reasonable request of a person, produce the representative's identity card for inspection.

(3) A person must, within 10 days after ceasing to be an authorised union OH&S representative, return the identity card to the Authority.

Maximum penalty: 5 penalty units.

52 Duration of appointment

(1) A person ceases to hold office as an authorised union OH&S representative if the person:

(a) comes to the end of a term of appointment and is not re-appointed; or

(b) ceases to be an officer or employee of the employee organisation by which the person was nominated for appointment; or

(c) resigns by notice of resignation given to the Authority; or

(d) is removed from office by the Authority for contravention of a condition of appointment; or

(e) is disqualified by the Authority from holding office as an authorised union OH&S representative.

(2) If an authorised union OH&S representative contravenes a condition of appointment, the Authority may, on application by an employer or other person, or on its own initiative, remove the representative from office.

(3) If a person misuses powers as an authorised union OH&S representative, the Authority may, on application an employer or other person affected by the misuse of power, disqualify the person from holding office as an authorised union OH&S representative.

53 Powers of authorised union OH&S representative

(1) Subject to the conditions of entry, an authorised union OH&S representative may enter a workplace for an authorised purpose.

(2) The conditions of entry are as follows:

(a) the industrial organisation represented by the authorised union OH&S representative must have members employed at the workplace or must be a party to an award or collective agreement governing employment at the workplace;

(b) the representative must comply with relevant obligations imposed under Commonwealth law;

Note

For example, section 757 of the Workplace Relations Act (Cth) requires 24 hours notice of entry in certain cases.

(c) the representative must, as soon as practicable after entering the workplace, produce the representative's identity card to the person apparently in charge of the workplace;

(d) the entry may only be made during ordinary working hours;

(e) the representative must comply with a reasonable request by the person in charge of the workplace to comply with a requirement relevant to health or safety that applies to the workplace.

(3) An authorised purpose is 1 of the following:

(a) to discuss health and safety issues during a meal break or other break in work with workers who are, or are eligible to become, members of the relevant employee organisation;

(b) to investigate a suspected contravention of this Act involving a member of the employee organisation.

(4) In carrying out an investigation, the authorised union OH&S representative may exercise 1 or more of the following powers:

(a) observe or inspect work and systems of work, the workplace, workplace infrastructure or equipment, materials and substances;

(b) interview (with the consent of the interviewees) members, or persons who are eligible to become members, of the employee organisation;

(c) take measurements and make records (including sketches and drawings, photographic records, and video, audio or audiovisual recordings) at the workplace;

(d) require the production of documents relating to health or safety at the workplace (but not confidential records relating to a worker's health unless the worker consents);

(e) examine and copy, or take extracts from, any document produced as required under paragraph (d).

Note

The duty to preserve confidentiality extends to an authorised OH&S representative (See section 18(3)).

(5) An authorised union OH&S representative may not enter a workplace consisting of residential premises currently used as a place of residence unless the occupier consents.

(6) The Authority may, on application by an authorised OH&S representative or an employer, determine a dispute about the exercise of powers under this section.

54 Compensation for improper interference

(1) If an authorised union OH&S representative, acting in the exercise or the purported exercise of powers under this Division, interferes improperly in another's business or affairs, and the other person suffers consequent loss or expense, the other person may claim compensation against the relevant employee organisation in a court of competent jurisdiction.

(2) The court may award such compensation on a claim under this section as it considers just and reasonable.

(3) In determining whether compensation should be awarded under this section and, if so, the quantum of compensation, the court must have regard to any relevant principles laid down in the regulations.

Part 5 Statutory duties of care

Division 1 Duties towards workers and others

55 Employer's general statutory duty of care

(1) An employer has a duty (the ***employer's general statutory duty of care***) to ensure, as far as reasonably practicable, that workers and others are not exposed to risks to health or safety arising from the conduct of the employer's business.

(2) If the employer is a natural person working in the employer's own business, the employer is to be regarded as a worker to whom the general statutory duty of care is owed by the employer him/herself.

(3) An employer carries out the general statutory duty of care by proceeding, in a systematic way, to:

(a) identify hazards; and

(b) identify, and assess the seriousness of, risks resulting from the hazards; and

(c) determine appropriate risk management measures:

(i) to eliminate, as far as reasonably practicable, avoidable risks; and

(ii) to minimise, as far as reasonably practicable, unavoidable risks; and

(d) carry the risk management measures into effect; and

(e) monitor and review the effectiveness of the measures.

(4) An employer who fails to comply with the employer's general statutory duty of care is guilty of an offence.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

56 Duties in regard to workplace

(1) An employer has a duty to take all reasonably practicable measures to ensure that the workplace, and the means of entering and leaving it, are safe.

(2) The duty extends, to the extent that may be appropriate in the circumstances, to:

(a) an owner or occupier of the workplace; and

(b) a person who designs, constructs, manufactures, imports, installs or supplies a workplace or any part or component of a workplace.

(3) An employer or other person who fails to comply with a duty under this section is guilty of an offence.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

57 Duties in regard to workplace infrastructure, equipment and materials

(1) An employer has a duty to take all reasonably practicable measures to ensure that:

(a) workplace infrastructure or equipment, and workplace materials, are safe; and

(b) workers are, where necessary, properly instructed in the use, and warned about risks involved in the use, of workplace infrastructure or equipment, and workplace materials; and

(c) if workplace materials are poisonous – adequate toxicological information is available.

(2) The duty extends, to the extent that may be appropriate in the circumstances, to a person who:

(a) owns, designs, constructs, manufactures, imports, installs or supplies workplace infrastructure or equipment or any component of workplace infrastructure or equipment; or

(b) designs, manufactures, imports or supplies workplace materials.

(3) An employer or other person who fails to comply with a duty under this section is guilty of an offence.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

Division 2 Risk management plans

58 Risk management plans

(1) An employer who proposes to undertake a hazardous activity must prepare a risk management plan and have it certified as an adequate risk management plan by a person with qualifications or credentials acceptable to the Authority.

(2) A risk management plan must comply with any requirements imposed by the regulations.

(3) An employer must, before commencing a hazardous activity, lodge a copy of the relevant risk management plan with the Authority.

Maximum penalty: 100 penalty units.

(4) An employer must not, without reasonable excuse, fail to comply with a certified risk management plan.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

Division 3 Duties of workers

59 Duties of workers

(1) A worker has a duty:

(a) to take reasonable care for the worker's own health and safety, and for the health and safety of others, while at work; and

(b) to follow reasonable directions given by, or on behalf of, the employer on issues related to health or safety; and

(c) to use relevant safety equipment provided for the worker's use; and

(d) to report a workplace accident to the employer as soon as practicable after it occurs.

(2) A worker must not:

(a) intentionally or recklessly interfere with or misuse safety equipment provided by the worker's employer; or

(b) intentionally create a risk to the health or safety of another at the worker's workplace.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

Division 4 Worker health surveillance

60 Duty to monitor health and safety

(1) An employer must, if so required by the regulations:

(a) monitor the health of the employer's workers or a particular class of workers; and

(b) monitor conditions relevant to the health and safety of workers at a workplace under the employer's control; or

(c) keep an appropriate record of the results of the monitoring.

(2) The records are to be kept in 2 parts:

(a) 1 (the ***confidential records***) consisting of information relevant to the health of the individual workers; and

(b) the other (the ***general records***) consisting of all other information.

(3) An employer must, at the request of a worker:

(a) make the general records available for inspection by the worker or an agent of the worker; and

(b) provide information from the confidential records relevant to the worker's own health and safety.

Maximum penalty: 20 penalty units.

Division 5 Codes of practice

61 Codes of practice

(1) A code of practice provides practical guidance on how to comply with a duty or duties under this Act.

(2) A code of practice may relate to:

(a) workplaces generally; or

(b) a particular class of workplaces; or

(c) a particular workplace.

(3) A code of practice:

(a) if it relates to workplaces generally or a particular class of workplaces – takes effect when approved by the Minister; and

(b) if it relates to a particular workplace – takes effect when approved by the Authority.

(4) An approval is to be effective for a period stated in the instrument of approval.

(5) The Minister or the Authority (as the case requires) may extend the period of approval from time to time.

(6) An approved code of practice is to be accessible on the Authority's website.

(7) An employer must keep an approved code of practice available for inspection at reasonable times by a worker or other person at a workplace to which the code of practice relates.

Maximum penalty: 20 penalty units.

62 Compliance with code of practice to be defence

If an employer or other person is prosecuted for non-compliance with a particular statutory duty, and a code of practice governing compliance with the relevant duty was in force at the time of the alleged non-compliance, it is a defence to the charge to establish that the defendant complied with the code of practice in relevant respects.

Division 6 Civil liability

63 Civil liability not affected by this Part

This Part does not create or affect a civil liability.

Part 6 Incident notification

64 Reportable incidents

A *reportable incident* is:

(a) a work-related accident; or

(b) an incident at a workplace creating a risk of a work-related accident and consisting of:

(i) a major structural failure or collapse; or

(ii) an explosion, implosion or fire; or

(iii) the escape, spillage or leakage of a harmful, or potentially harmful, substance; or

(iv) the fall of an object from a height; or

(v) the failure of a system on which the health or safety of workers is dependent (such as a ventilation system in a mine); or

(c) an electric shock suffered at the workplace; or

(d) an incident classified by the regulations as a reportable incident.

65 Authority to be notified of reportable incidents

(1) If a reportable incident occurs, the employer must:

(a) notify the Authority as soon as practicable of its occurrence; and

(b) give the Authority a written report on the incident, in an approved form, within 48 hours after its occurrence.

(2) The employer must keep a copy of the report given to the Authority under subsection (1)(b) for at least 5 years after the date of the incident.

(3) The employer must, on request, make a copy of the report available for inspection by:

(a) an authorised person; or

(b) a person, or a representative of a person, who was injured in the incident, or who was exposed to risk of significant injury by the incident; or

(c) a representative of a person killed in the incident; or

(d) a health and safety representative; or

(e) a health and safety committee established by the employer.

(4) An employer who fails to comply with a provision of this section is guilty of an offence.

Maximum penalty: 200 penalty units.

66 Power of Authority to require site to be left undisturbed in certain cases

(1) If a reportable incident results in death or serious injury, the Authority may direct the employer to ensure that the site of the incident is not disturbed until a workplace safety officer has investigated the incident.

(2) If the Authority gives a direction under this section, it must ensure that the incident is investigated as soon as possible by a workplace safety officer.

(3) A direction under this section cannot prevent action necessary to:

(a) aid injured persons; or

(b) avert any further threat to health or safety.

(4) An employer must comply with a direction under this section.

Maximum penalty: 500 penalty units.

Part 7 Investigations

67 Power to enter workplace

(1) A workplace safety officer may enter a workplace and remain there for as long as may be necessary, or desirable, to carry out an authorised investigation.

(2) The power may be exercised:

(a) after giving the employer reasonable notice of the officer's intention to enter the workplace and the purpose of the authorised investigation; or

(b) on the authority of a warrant or an authorisation under subsection (4).

(3) However, an officer may only enter a workplace that is currently used as a place of residence:

(a) with the consent of the occupier; or

(b) on the authority of a warrant.

(4) The Authority may authorise an officer to enter a workplace if the Authority believes, on reasonable grounds, that it is urgently necessary for an officer to do so:

(a) to investigate a dangerous, or potentially dangerous, situation; or

(b) to preserve evidence of a contravention of this Act.

68 Workplace safety officer may take assistants

A workplace safety officer may be accompanied by assistants when entering a workplace or carrying out an authorised investigation under this Part.

Examples

1 An officer might take assistants to help overcome any physical barriers to the entry or investigation.

2 An officer might take an interpreter to a workplace where the officer is likely to encounter workers who are not fluent in English.

69 Warrants

(1) A workplace safety officer may apply to a Justice for a warrant authorising the officer to enter a workplace to carry out an authorised investigation.

(2) If the Justice is satisfied by evidence on oath that the warrant is reasonably necessary for the purposes of an authorised investigation, the Justice may issue the warrant.

(3) The warrant authorises any workplace safety officer:

(a) to enter and remain on the premises specified in the warrant for the purposes of an authorised investigation; and

(b) to use such force as may be reasonably necessary for the purpose.

(4) The warrant remains in force for a period (not exceeding 14 days) specified in the warrant.

(5) An officer who enters premises under the powers conferred by a warrant must, at the request of a person apparently in charge of the premises, produce the warrant for examination.

70 Powers of officers while at a workplace

(1) A workplace safety officer who enters a workplace for the purposes of an authorised investigation may exercise 1 or more of the following powers:

(a) observe how work is carried out at the workplace;

(b) make a visual or audiovisual record of any process or thing at the workplace;

(c) operate equipment or facilities at the workplace;

(d) examine any records or other documentary materials relevant to the safety of the workplace or of work carried on at the workplace;

(e) take samples of workplace materials;

(f) measure temperatures, noise levels, levels of atmospheric pollution, contamination or radiation, or any other factors that could affect the health or safety of workers;

(g) take possession of any object or material (including records or documentary material) that may be evidence of a contravention of this Act;

(h) ask any person on the premises to do any of the following:

(i) to state the person's full name, date of birth and address;

(ii) to answer questions relevant to the investigation asked by the officer;

(iii) to produce specified records or documentary material relevant to the investigation;

(iv) to operate equipment or facilities on the premises;

(v) to give other assistance the officer reasonably requires.

(2) A person to whom a request is addressed under subsection (1)(h) must comply with the request to the best of the person's ability and, if asked to answer a question, must do so to the best of the person's knowledge, information and belief.

Maximum penalty: 20 penalty units.

(3) If a workplace safety officer takes anything from the workplace, the officer must issue a receipt in the approved form and:

(a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or

(b) otherwise, leave it on the premises in an envelope addressed to the occupier.

(4) If a workplace safety officer takes a sample for analysis, the officer must, if practicable:

(a) divide the sample into three approximately equal portions; and

(b) give 1 to the employer, submit another for analysis and retain the third for future comparison.

71 Use of force

A workplace safety officer may use reasonable force to enter a workplace or to carry out an authorised investigation.

72 Power of formal interrogation etc.

(1) For the purposes of an authorised investigation, a workplace safety officer may, by notice, require a person:

(a) to provide written answers to specified questions or to provide other specified written information; or

(b) to produce records or other documentary materials relevant to the work carried out by workers, or the safety of a workplace or workplace infrastructure or equipment, or workplace materials.

(2) A person required, by notice under this section, to provide written answers to questions or other written information must, if the notice requires, verify the answers or information by statutory declaration.

(3) A person must comply with a notice under this section, within the time allowed in the notice, to the best of the person's ability and, if asked to answer a question, must do so to the best of the person's knowledge, information and belief.

Maximum penalty: 100 penalty units.

73 Obstructing etc. officer

A person must not obstruct or hinder:

(a) a workplace safety officer who is exercising a function under this Part; or

(b) a person who is assisting a workplace safety officer in the exercise of such a function.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

74 General defence

It is a defence to a charge of an offence against this Part involving a failure to comply with a requirement or request made by a workplace safety officer (including a requirement or request to answer a question or provide information) for the defendant to prove:

(a) that the officer did not, before making the requirement or request, identify him/herself to the defendant as a workplace safety officer by producing the officer's identity card or in some other way; or

(b) that the officer did not warn the defendant that failure to comply with the requirement or request would constitute an offence.

Part 8 Enforcement

Division 1 Improvement notices

75 Improvement notices

(1) An ***improvement notice*** is a notice requiring specified action:

(a) to remedy a contravention of this Act; or

(b) to prevent the occurrence of an apprehended contravention of this Act.

(2) A workplace safety officer may issue an improvement notice against a person if there are reasonable grounds to believe that:

(a) the person has contravened, is contravening, or is about to contravene, this Act; and

(b) the person should take the action specified in the notice to remedy or prevent the contravention.

(3) An improvement notice must:

(a) state the grounds for believing that the contravention has occurred, is occurring, or is about to occur (identifying the provision contravened or about to be contravened); and

(b) state the action required to remedy or prevent the contravention; and

(c) state a reasonable time within which the respondent is required to take the action; and

(d) contain a statement, in an approved form, of the respondent's rights of review and appeal.

(4) An improvement notice may allow specified alternative ways of complying with the notice.

(5) A person against whom an improvement notice is issued who fails to comply with the notice within the time allowed in the notice is guilty of an offence.

Maximum penalty: 100 penalty units.

Division 2 Prohibition notice

76 Issue of prohibition notice

(1) If a workplace safety officer believes on reasonable grounds that workers are exposed to serious and immediate risk to their health or safety, the officer may issue a notice (a ***prohibition notice***) to the employer requiring the employer to stop a particular activity exposing workers to the risk, or to stop workers from working in a particular situation or activity in which they are exposed to the risk.

(2) A prohibition notice operates until a workplace safety officer is satisfied that the risk has been eliminated or reduced to an acceptable level and withdraws the notice.

(3) A prohibition notice must:

(a) state the grounds for believing that workers are exposed to a serious and immediate risk to their health or safety; and

(b) identify the situation or activity to which the notice relates; and

(c) contain a statement, in an approved form, of the respondent's rights of review and appeal.

(4) An employer who fails to comply with a prohibition notice is guilty of an offence.

Maximum penalty: 100 penalty units.

Division 3 Power to stop work for serious risks

77 Power to stop work for serious risk

(1) If work involves a serious and immediate risk to a worker's health or safety:

(a) the worker may discontinue work until the risk has been eliminated or mitigated; or

(b) a workplace safety officer may issue a stop work notice to the worker.

(2) A ***stop work notice*** is a notice to a worker requiring the worker to stop work in a situation in which the worker is exposed to a serious and immediate risk to the worker's health or safety.

(3) If a worker stops work, or is required to stop work, under this section, the employer may assign the worker to some other work not involving a serious risk.

(4) A worker who fails to comply with a stop work notice is guilty of an offence.

Maximum penalty: 100 penalty units.

(5) The Authority may, on application by an employer or a worker, determine a dispute between the employer and the worker about whether a serious and immediate risk exists to the worker's health or safety.

Division 4 Enforcement notices generally

78 Enforcement notices

(1) An enforcement notice (except a stop work notice) must be in an approved written form.

(2) A stop work notice may be given orally but, in that event, the notice must be reduced to an approved written form as soon as practicable.

(3) An enforcement notice must, wherever practicable, be given personally to the person to whom the notice is addressed.

(4) If it is not practicable to give the notice personally, it may be given by fax, email or in any other appropriate way.

(5) If an enforcement notice is addressed to a person other than the employer, a copy of the notice must be given, as soon as practicable, to the employer, and for the purposes of review of, and appeal against the notice, both the person against whom the notice is issued and the employer will be regarded as respondents to the notice.

(6) An enforcement notice (or a copy of an enforcement notice) may be given to an employer by giving it to the person apparently in charge of work at the workplace to which the notice relates.

Division 5 Injunctive remedies

79 Injunctions

(1) If the Court is satisfied, on an application by the Authority, that a person should take, or refrain from, specified action in order to comply with a duty under this Act, the Court may order the person to take, or to refrain from, the relevant action.

(2) If a person fails, without reasonable excuse, to comply with an order under this section, the person is (in addition to any penalty for contempt of court) guilty of an offence.

Maximum penalty: 1 000 penalty units.

Division 6 Criminal enforcement

80 Authority's approval required for criminal prosecution

(1) A charge of an offence against this Act cannot be laid without the Authority's approval.

(2) Proceedings for an offence against this Act must be commenced within 3 years after the date of the alleged commission of the offence.

(3) The Authority may, instead of approving prosecution of an offence against this Act (the ***principal offence***), enter into an agreement with the alleged offender under which the alleged offender agrees to take specified action to remedy the contravention or to guard against future contravention of this Act.

(4) An alleged offender who fails to comply with an agreement under subsection (3) commits a further offence for which a penalty not exceeding the maximum penalty fixed for the principal offence may be imposed.

81 Regulatory offences

(1) An offence against this Act is, unless listed in subsection (2), a regulatory offence.

(2) An offence against section 14, 18, 39(3), 58(4), 59(2), 70, 72, 73 or 93 is not a regulatory offence.

82 Aggravated offences

(1) An offence against this Act is aggravated if:

(a) the person who commits the offence does the act or makes the omission giving rise to the offence intentionally; and

(b) the person ought to know that the offence may result in death or serious injury; and

(c) the offence in fact results in the death of a person.

(2) If a person is convicted of an offence that is aggravated under subsection (1) the penalty increases to a fine of not less than 250 penalty units and not more than 2 500 penalty units or imprisonment for a term not exceeding 5 years.

Note

For a company this translates to a fine of not less than 1 250 and not more than 12 500 penalty units. (See section 38DB of the Interpretation Act.)

(3) An offence against this Act is also aggravated if:

(a) the offence is committed by a company; and

(b) the court is satisfied that:

(i) the circumstances of the offence show that the company was recklessly indifferent to the health or safety of another; or

(ii) the circumstances of the offence, when considered in the context of those of another offence or other offences committed by the company, show that the company has persistently disregarded obligations in regard to occupational health or safety.

(4) If a company is convicted of an offence that is aggravated under subsection (3), the court may, in addition to any other penalty to which the company is liable, impose an additional penalty of up to 2 000 penalty units.

83 Court's power to make orders of various kinds on conviction of offender for offence against this Act

(1) If a court convicts a person of an offence against this Act, the court may, in addition to any other penalty imposed by the court, make any 1 or more of the following orders:

(a) an adverse publicity order;

(b) a remedial measures order;

(c) a training order.

(2) An ***adverse publicity order*** is an order requiring the defendant to publicise in a manner and to an extent specified by the court:

(a) the fact of the conviction and, if the court so requires, the amount of the penalty; and

(b) any of the circumstances surrounding the case that the court requires to be publicised.

(3) A ***remedial measures order*** is an order requiring the defendant to take specified measures for improving standards of occupational health and safety at a particular workplace.

Example

A remedial measures order might require the defendant to:

(a) engage a consultant, approved by the Authority, to advise on and assist with occupational safety; and

(b) develop and implement a systematic approach to managing risks to health or safety that may arise in the conduct of the defendant's business; and

(c) arrange for the carrying out of an independent audit of the health and safety measures for the defendant's business by a person approved by the Authority.

(4) A ***training order*** is an order requiring the defendant to undertake a specified course of training.

(5) An order under this section may include incidental provisions such as a requirement to provide the Authority with specified evidence of compliance.

(6) If a defendant fails to comply with an adverse publicity order, a remedial measures order or a training order, the defendant is guilty of a further offence.

Maximum penalty: 100 penalty units.

84 Court's power on releasing defendant on recognisance

(1) If a court finds a person guilty of an offence against this Act, but releases the defendant on a bond under section 11 of the *Sentencing Act*, the conditions of the bond may include 1 or both of the following:

(a) a remedial measures condition;

(b) a training condition.

(2) A ***remedial measures condition*** is a condition requiring the defendant to take specified measures for improving standards of occupational health and safety at a particular workplace.

Example

A remedial measures condition might require the defendant to:

(a) engage a consultant, approved by the Authority, to advise on and assist with occupational safety; and

(b) develop and implement a systematic approach to managing risks to health or safety that may arise in the conduct of the defendant's business; and

(c) arrange for the carrying out of an independent audit of the health and safety measures for the defendant's business by a person approved by the Authority.

(3) A ***training condition*** is a condition requiring the defendant to undertake a specified course of training.

(4) A condition under this section may include incidental provisions such as a requirement to provide the Authority with specified evidence of compliance.

85 Vicarious liability of companies

(1) In determining the criminal liability of a company for an offence against this Act, conduct of an officer, agent or employee acting within the actual or apparent scope of his or her authority or employment will be imputed to the company.

(2) If the officer, agent or employee acted intentionally, recklessly or negligently, the intention, recklessness or negligence will also be imputed to the company.

86 Offences by officers of companies

(1) If a company commits an offence (the *principal offence*) against this Act, an officer of the company also commits an offence (the *secondary offence*) if:

(a) the principal offence is attributable to the act or omission of the officer; or

(b) the officer could have prevented the commission of the principal offence by exercising reasonable care.

(2) A person who commits a secondary offence is liable to the penalty for commission of the principal offence by a natural person.

(3) A person may be prosecuted for, and convicted of, a secondary offence even though the company has not been prosecuted for, or convicted of, the principal offence.

Part 9 Review and appeal

Division 1 Internal review

87 Reviewable decisions

The following decisions are *reviewable decisions*:

(a) a decision by the Authority to disclose confidential information (Section 19);

(b) a decision by the Authority to establish a workgroup (Section 34);

(c) a decision by the Authority to disqualify a person from holding office as a health and safety representative (Section 37);

(d) a decision by the Authority to remove an authorised union OH&S representative from office for breach of a condition of appointment or to disqualify a person from holding office as an authorised union OH&S representative (Section 52);

(e) a decision by the Authority determining a dispute about the powers of an authorised union OH&S representative (Section 53);

(f) a decision by a workplace safety officer to take possession of an object or material under section 70(1)(g);

(g) a decision by a workplace safety officer to issue an enforcement notice;

(h) a refusal by a workplace safety officer to withdraw a prohibition notice;

(i) a decision by the Authority determining a dispute about whether a serious and immediate risk to the health or safety of a worker exists (Section 77).

88 Application for internal review

(1) A person affected by a reviewable decision may, within 14 days after the date of the decision, apply to the Authority for a review of the decision.

(2) An application for a review must:

(a) be made in an approved manner and form; and

(b) set out in detail the grounds on which the applicant believes the decision should be reviewed; and

(c) state the nature of the decision the applicant seeks on the review.

(3) The Authority may extend the time for applying for review in a particular case if satisfied that there is good reason to do so.

(4) The Authority may summarily reject an application for review if it considers the application frivolous, vexatious or lacking in substance.

89 Reference of application to review committee

(1) On receiving an application for review, the Authority must (unless it summarily rejects the application) refer it for consideration by a review committee.

(2) The Authority will appoint such review committees as it considers necessary for the purpose of conducting reviews under this Part.

(3) A review committee may consist of 1 or more persons.

90 Review

(1) On a review, the review committee will allow the applicant and other persons directly affected by the decision under review an opportunity to make representations orally or in writing to the committee.

(2) At the conclusion of the review, the review committee may confirm or revoke the decision under review and give appropriate consequential directions.

(3) A review committee must give written reasons for its decision on a review.

Division 2 Appeals

91 Appeal

(1) A person who is dissatisfied with the decision on review may, within 21 days after the date of the decision, appeal to the Court against the decision by lodging a notice of appeal with the Court.

(2) The notice of appeal must set out, in detail, the grounds of the appeal.

(3) The Court may extend the time for an appeal in a particular case if satisfied that there is good reason to do so.

(4) The Court may summarily reject an appeal if it considers the appeal frivolous, vexatious or lacking in substance.

92 Powers of the Court on an appeal

(1) On an appeal, the Court may confirm or set aside the decision on appeal.

(2) If the Court sets aside a decision on appeal, it may make any decision that should, in its opinion, have been made in the first instance and give directions it considers necessary or desirable to give effect to that decision.

Part 10 Miscellaneous

93 Discrimination against workers

(1) An employer must not discriminate against a worker or a prospective worker on the ground that the worker or prospective worker:

(a) is or has been a health and safety representative or a member of a health and safety committee; or

(b) exercises or has exercised power as a health and safety representative or a member of a health and safety committee; or

(c) assists of has assisted, or gives or has given any information to, a workplace safety officer, a health and safety representative or a member of a health and safety committee; or

(d) raises, or has raised, an issue of concern about health or safety with the employer, a worker, a workplace safety officer, a health and safety representative or a member of a health and safety committee.

(2) An employer discriminates against a worker or prospective worker on a particular ground if the ground was the predominant reason for the discrimination.

(3) An employer who discriminates against a worker or prospective worker contrary to this section commits an offence.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(4) If, in proceedings for an offence against this section, the employer is found to have discriminated against a worker or prospective worker, it will be presumed that the employer did so on the ground alleged in the instrument of charge unless the employer establishes the contrary on the balance of probabilities.

(5) If an employer is convicted of an offence against this section, the court may, as well as imposing a penalty, order the employer to compensate the worker or prospective worker or to take other action specified by the court to remedy the contravention.

94 Abrogation of privilege against self-incrimination

(1) It is not an excuse for refusing or failing to answer a question, or for refusing or failing to provide information, as required under this Act that the answer to the question, or the information, would tend to incriminate the person subject to the requirement of an offence.

(2) However, the answer to the question or the information provided is not admissible in evidence against the person in civil or criminal proceedings except:

(a) proceedings for an offence against the provision under which the requirement was made; or

(b) proceedings in the nature of perjury.

95 Review of Act

(1) There is to be a review of this Act at intervals of 5 years from its commencement.

(2) The Minister will carry out, and report on, the review.

(3) The review will cover the following subjects:

(a) the administration of this Act and other Acts relevant to occupational health and safety during the period covered by the review;

(b) the effectiveness of that administration and any changes that may be necessary or desirable to improve its effectiveness;

(c) the extent the objects of this Act have been achieved during the period covered by the review;

(d) any other subjects the Minister considers relevant to the review.

(4) After preparing the report, the Minister must table it in the Legislative Assembly.

96 Regulations

(1) The Administrator may make regulations under this Act.

(2) The regulations may apply generally or be limited in their application to a particular industry sector.

Example

Regulations might be made with specific application to the mining industry.

(3) The regulations may adopt, or operate by reference to, provisions of a standard, code or rule, as in force at a particular time, or as in force from time to time.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Workplace Health and Safety Act 2007 (Act No. 31, 2007)

Assent date	12 December 2007
Commenced	1 July 2008 (*Gaz* S29, 25 June 2008)

Statute Law Revision Act 2009 (Act No. 25, 2009)

Assent date	1 September 2009
Commenced	16 September 2009 (*Gaz* G37, 16 September 2009, p 3)

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

3 LIST OF AMENDMENTS

s 4	amd No. 25, 2009, s 10
s 13	amd No. 40, 2010, s 118
s 76	amd No. 25, 2009, s 10