GUIDE TO THE MODEL WORK HEALTH AND SAFETY ACT

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INTRODUCTION

This guide provides an overview of the *Work Health and Safety Act* (WHS Act). It is designed to help people generally understand their health and safety duties and rights at work. Local versions of this guide may also be available at each work health and safety regulator's website.

It is not intended to be read in place of the WHS Act. To assist readers cross-references to specific sections of the WHS Act are provided after each heading.

Nationally harmonised work health and safety laws

The WHS Act like that of most other jurisdictions is based on the 'model' WHS Act developed by Safe Work Australia.

The aim is to provide all workers in Australia with the same standard of health and safety protection regardless of the work they do or where they work.

A stronger national approach means greater certainty for businesses (particularly those operating across state borders) and over time reduced compliance costs for business.

More consultation between businesses, workers and their representatives, along with clearer responsibilities will make workplaces safer for everyone.

The harmonised work health and safety laws apply in the majority of jurisdictions. For more information about whether they apply in your jurisdiction check with your local regulator.

Purpose of the WHS Act (section 3)

The WHS Act provides a framework to protect the health, safety and welfare of all workers at work and of other people who might be affected by the work. The WHS Act aims to:

- protect the health and safety of workers and other people by eliminating or minimising risks arising from work or workplaces
- ensure fair and effective representation, consultation and cooperation to address and resolve health and safety issues in the workplace
- encourage unions and employer organisations to take a constructive role in improving work health and safety practices
- assisting businesses and workers to achieve a healthier and safer working environment
- promote information, education and training on work health and safety
- provide effective compliance and enforcement measures, and
- deliver continuous improvement and progressively higher standards of work health and safety.

In furthering these aims regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work as is reasonably practicable.

For these purposes 'health' includes psychological health as well as physical health.

WHS REGULATIONS AND CODES OF PRACTICE ETC. (SECTIONS 274-276)

WHS Regulations

The WHS Regulations specify the way in which some duties under the WHS Act must be met and prescribes procedural or administrative requirements to support the WHS Act (for example requiring licences for specific activities and the keeping of records).

Codes of Practice

Codes of Practice provide practical guidance on how to meet the standards set out in the WHS Act and the WHS Regulations. Codes of Practice are admissible in proceedings as evidence of whether or not a duty under the WHS laws has been met. They can also be referred to by an inspector when issuing an improvement or prohibition notice.

It is recognised that equivalent or better ways of achieving the required work health and safety outcomes may be possible. For that reason compliance with Codes of Practice is not mandatory providing that any other method used provides an equivalent or higher standard of work health and safety than suggested by the Code of Practice.

Interpretive guidelines

Interpretive guidelines are a formal statement on how WHS regulators believe key concepts in the WHS Act operate and in doing so provide an indication of how the laws will be enforced.

DEFINITIONS (SECTIONS 4-8)

The following terms are used throughout this guide:

Duty Holder – refers to any person who owes a work health and safety duty under the WHS Act including a person conducting a business or undertaking (PCBU), designer, manufacturer, importer, supplier, installer of products or plant used at work (upstream duty holders), an officer and workers. More than one person can concurrently have the same duty in which case the duty is shared. Duties cannot be transferred.

Health and safety committee (HSC) – a group established under the WHS Act that facilitates cooperation between a PCBU and workers to provide a safe place of work. The committee must have at least 50 per cent of members who have not been nominated by the PCBU, that is workers or HSRs.

Health and safety representative (HSR) – a worker who has been elected by a work group under the WHS Act to represent them on health and safety issues.

Officer – an officer within the meaning of section 9 of the *Corporations Act 2001* (Cth) other than each partner within a partnership. Broadly, an officer is a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the organisation's activities. This does not include an elected member of a municipal council acting in that capacity or a minister of a state, territory or the Commonwealth.

An officer can also be an officer of the Crown or a public authority if they are a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the Crown or public authority.

Each partner within a partnership is not an officer but a PCBU in their own right.

For further information on officers please refer to the interpretive guideline on officers available at www.safeworkaustralia.gov.au.

Person conducting a business or undertaking (PCBU) – a person conducting a business or undertaking alone or with others, whether or not for profit or gain. A PCBU can be a sole trader (for example a self-employed person), each partner within a partnership, company, unincorporated association or government department of public authority (including a municipal council).

An elected member of a municipal council acting in that capacity is not a PCBU.

A 'volunteer association' that does not employ anyone is not a PCBU. If it becomes an employer it also becomes a PCBU for purposes of the WHS Act.

A 'strata title body corporate' that does not employ anyone is not a PCBU, in relation to any common areas (it is responsible for) used only for residential purposes.

For further information on the meaning of PCBU please refer to the interpretive guideline on PCBUs available at www.safeworkaustralia.gov.au.

Plant – includes any machinery, equipment, appliance, container, implement or tool, and any component or anything fitted or connected to these things.

Structure – anything that is constructed, whether fixed or moveable, temporary or permanent and includes buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels). Includes any component or part of a structure.

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

Supply – supply and re-supply of a thing provided by way of sale, exchange, lease, hire or hire-purchase arrangement, whether as principal or agent.

Volunteer – a person who acts on a voluntary basis regardless of whether they receive out of pocket expenses.

Volunteer association – a group of volunteers working together for one or more community purposes—whether registered or not—that does not employ anyone to carry out work for the association.

Worker – any person who carries out work for a PCBU, including work as an employee, contractor, subcontractor, self-employed person, outworker, apprentice or trainee, work experience student, employee of a labour hire company placed with a 'host employer' and volunteers.

Work group – a group of workers represented by an HSR who in many cases share similar work conditions (for example all the electricians in a factory, all people on night shift, all people who work in the loading bay of a retail storage facility).

Workplace – any place where a worker goes or is likely to be while work is carried out for a business or undertaking. This may include offices, factories, shops, construction sites, vehicles, ships, aircraft or other mobile structures on land or water such as offshore units and platforms (that are not already covered under the Commonwealth's offshore WHS laws).

The glossary contains additional definitions of terms used throughout this guide.

Reasonably practicable (section 18)

A guiding principle of the WHS Act is that all people are given the highest level of health and safety protection from hazards arising from work, so far as is reasonably practicable.

The term 'reasonably practicable' means what could reasonably be done at a particular time to ensure health and safety measures are in place.

In determining what is reasonably practicable, there is a requirement to weigh up all relevant matters including:

- the likelihood of a hazard or risk occurring (in essence the probability of a person being exposed to harm)
- the degree of harm that might result if the hazard or risk occurred (in essence the potential seriousness of injury or harm)
- what the person concerned knows, or ought to reasonably know, about the hazard or risk and ways of eliminating or minimising it
- the availability of suitable ways to eliminate or minimise the hazard or risk, and
- the cost of eliminating or minimising the hazard or risk.

Costs may only be considered after assessing the extent of the risk and the available ways of eliminating or minimising the risk.

Ordinarily cost will not be the key factor in determining what it is reasonably practicable for a duty holder to do unless it can be shown to be 'grossly disproportionate' to the risk. If the risk is particularly severe a PCBU will need to demonstrate that costly safety measures are not reasonably practicable due to their expense and that other less costly measures could also effectively eliminate or minimise the risk.

For more information on what is reasonably practicable please refer to the interpretive guideline on reasonably practicable available at www.safeworkaustralia.gov.au.

WORK HEALTH AND SAFETY DUTIES

General principles (sections 13-17)

The WHS Act sets out work health and safety duties for PCBUs, officers, unincorporated associations, government departments and public authorities including municipal governments, workers and other people at a workplace.

Coverage

The WHS Act covers:

- People who carry out work in any capacity for a person conducting a business or undertaking including employees, contractors, subcontractors, self-employed persons, outworkers, apprentices and trainees, work experience students and volunteers who carry out work.
- Other people at a workplace like visitors and customers at a workplace.

The WHS Act does not cover 'volunteer associations' who do not employ anyone.

More information about volunteer organisations and volunteers is available on the Safe Work Australia website and from local work health and safety regulators.

Multiple and shared duties (sections 14-16)

A person may have more than one duty. For example the working director of a company has duties as an officer of the company and also as a worker.

More than one person may have the same duty. A duty cannot be transferred to another person.

If more than one person has a duty for the same matter each person retains responsibility and must discharge their duty to the extent to which the person has the capacity to influence and control the matter—disregarding any attempts to 'contract out' of their responsibility.

EXAMPLE
A labour hire company hires out its employees to 'host employers' to carry out work for them. Both the labour hire company and the 'host employer' owes a duty of care to those employees. In such cases both are fully responsible for meeting that duty to the extent to which they have capacity to influence and control the matter. It is not possible to 'contract out' work health and safety duties.

EXAMPLE
A principal contractor and a subcontractor for construction work must ensure, so far as is reasonably practicable, the provision of adequate facilities for the welfare of the workers carrying out the construction work. This does not mean that both are responsible for providing the facilities. One may provide the facilities with the other duty holder satisfying themselves that their duty is met because the facilities provided by the other duty holder fulfil their obligations.

Duties of a PCBU

Primary duty of care (section 19)

The WHS Act requires all PCBUs to ensure, so far as is reasonably practicable, the health and safety of:

- workers engaged, or caused to be engaged by the person, and
- workers whose activities in carrying out the work are influenced or directed by the person,

while workers are at work in the business or undertaking.

This primary duty of care requires duty holders to ensure health and safety, so far as is reasonably practicable, by eliminating risks to health and safety. If this is not reasonably practicable, risks must be minimised so far as is reasonably practicable.

PCBUs owe a similar duty of care to other people who may be at risk from work carried out by the business or undertaking.

A self-employed person must ensure his or her own health and safety while at work, so far as is reasonably practicable.

Primary duty of care, 'upstream' duties and duties of 'officers', workers and other persons (sections 19-28)

Under the primary duty of care a PCBU must ensure, so far as is reasonably practicable:

- the provision and maintenance of a working environment that is safe and without risks to health, including safe access to and exit from the workplace
- the provision and maintenance of plant, structure and systems of work that are safe and do not pose health risks (for example providing effective guards on machines and regulating the pace and frequency of work)
- the safe use, handling, storage and transport of plant, structure and substances (for example toxic chemicals, dusts and fibres)
- the provision of adequate facilities for the welfare of workers at work (for example access to washrooms, lockers and dining areas)
- the provision of information, instruction, training or supervision to workers needed for them to work without risks to their health and safety and that of others around them
- that the health of workers and the conditions of the workplace are monitored to prevent injury or illness arising out of the conduct of the business or undertaking, and
- the maintenance of any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.

Duty to consult, cooperate and coordinate (sections 46-49)

DUTY TO CONSULT WITH OTHER DUTY HOLDERS

The WHS laws require duty holders with shared responsibilities to work together to make sure someone does what is needed. This requires consultation, co-operation and co-ordination between duty holders.

For example there may be a number of different duty holders involved in influencing how work is carried out (that is suppliers, contractors and building owners). If more than one person has a health and safety duty in relation to the same matter, they must consult, co-operate and coordinate activities so far as is reasonably practicable, in relation to the matter. Each must share health and safety-related information in a timely manner and cooperate to meet their shared health and safety obligations.

The duty to 'consult' does not require agreement, although each duty holder retains responsibility for discharging their health and safety duty.

DUTY TO CONSULT WORKERS AND THEIR REPRESENTATIVES

Each PCBU must, so far as is reasonably practicable, consult with workers and HSRs (if any) about matters that directly affect them. This duty extends to consulting with all kinds of workers not just the PCBU's own employees, including any contractors and their workers, employees of labour hire companies, students on work experience, apprentices and trainees.

Duty of PCBUs with management or control of workplaces

A PCBU with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace and anything arising from the workplace does not put at risk the health or safety of any person.

Duty of PCBUs with management or control of fixtures, fittings or plant at workplaces

A PCBU 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 do not put at risk the health and safety of any person.

A PCBU that installs, erects or commissions plant or structures must ensure all workplace activity relating to the plant or structure including its decommissioning or dismantling is, so far as is reasonably practicable, without risks to health and safety.

Duty of officers (section 27)

Officers of corporations and other organisations must manage corporate risks—including work health and safety risks.

Under the WHS Act an officer of a PCBU must exercise due diligence to ensure the PCBU complies with its health and safety duties. This duty relates to the strategic, structural, policy and key resourcing decisions—that is, how the place is run.

Due diligence includes taking reasonable steps to:

- acquire and keep up to date knowledge on work health and safety matters
- understand the nature and operations of the work and associated hazards and risks
- ensure the PCBU has, and uses, appropriate resources and processes to eliminate or minimise risks to work health and safety
- ensure the PCBU has appropriate processes to receive and consider information about work-related incidents, hazards and risks, and to respond in a timely manner
- ensure the PCBU has, and implements, processes for complying with their duties and obligations (for example reports notifiable incidents, consults with workers, complies with notices, provides appropriate training and instruction and ensures HSRs receive training entitlements), and
- verify the provision and use of the relevant resources and processes.

An officer may be charged with an offence under the WHS Act whether or not the PCBU has been convicted or found guilty of an offence under the Act.

For further information on officers please refer to the interpretative guideline on officers available at www.safeworkaustralia.gov.au.

Duty of workers (section 28)

While at work, workers must take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions. They must also:

- comply, so far as they are reasonably able, with any reasonable instruction given by the PCBU to allow the PCBU to comply with WHS laws, and
- cooperate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

Duties of other persons at the workplace (section 29)

Similar duties apply to other persons at a workplace. Any person at a workplace, including customers and visitors, must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction that is given by the PCBU to comply with WHS laws.

Volunteers (section 34)

Volunteers that owe duties under the WHS laws cannot be prosecuted except in relation to their worker's duty.

Further duties of upstream PCBUs (designers, manufacturers, importers and suppliers)

Designers, manufacturers, importers and suppliers of plant, structures or substances can influence the safety of these products before they are used in the workplace. These businesses or undertakings have a responsibility to ensure, so far as is reasonably practicable, that their products are without risks to health and safety when used at a workplace—throughout their entire lifecycle.

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
Designers of plant, structures or substances (section 22)	A PCBU who is a designer of a plant, structure or substance that is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling or construction, storage, dismantling and disposal is designed, so far as is reasonably practicable, to be without risks to health or safety when used for its intended purpose.	Designers of the plant, structure or substance must carry out tests and examinations sufficient to ensure that when used for its intended purpose the plant, structure or substance meets work health and safety requirements.	Adequate information must be given to those for whom the plant, structure or substance was designed about its intended purpose, test results and any conditions necessary to ensure that it is safe and without risks to health or safety, when used for its intended purpose. Current relevant information must also be provided, so far as reasonably practicable, to other end users at a workplace upon request.
Manufacturers of plant, structures or substances (section 23)	A PCBU who is a manufacturer of any plant, structure or substance which is manufactured to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling, storage and disposal or dismantling is so far as is reasonably practicable without risks to health or safety when used for its intended purpose.	Manufacturers must carry out or arrange tests and examinations sufficient to ensure that the plant, structure or substance is manufactured to meet work health and safety requirements when used for a purpose for which it was manufactured.	Adequate information must be given to any person to whom the product is provided about the purpose for which it was manufactured, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety. Current relevant information must also be provided, so far as reasonably practicable, to other end users at a workplace upon request.

Importers of plant, substances or structures (section 24)	A PCBU who is an importer of any plant, substance or structure which is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling, storage and disposal or dismantling is, so far as is reasonably practicable, without risks to health or safety when used for its intended purpose.	Importers must carry out or arrange tests and examinations sufficient to ensure that the imported plant, structure or substance meets work health and safety requirements when used for its intended purpose. Alternatively importers must ensure that these tests and examinations have been carried out.	Adequate information must be given to any person who the importer supplies with the plant, structure or substance about its intended purpose, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety. Current relevant information must also be provided, so far as reasonably practicable, to other end users at a workplace upon request.
Duties of **suppliers** of plant, substances or structures (section 25)	A PCBU who is a supplier of any plant, substance or structure that is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling, storage and disposal or dismantling is, so far as is reasonably practicable, without risks to health or safety when used for its intended purpose.	Suppliers must carry out or arrange tests and examinations sufficient to ensure that the supplied plant, structure or substance meets work health and safety requirements when used for its intended purpose. Alternatively suppliers must ensure that these tests and examinations have been carried out.	Adequate information must be given to any person who the supplier supplies with the plant, structure or substance about its intended purpose, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety. Current relevant information must also be provided, so far as reasonably practicable, to other end users at a workplace upon request.
Duties of people **installing, constructing or commissioning** plant or structures. (section 26)	A PCBU who installs, constructs or commissions plant or structures must also ensure, so far as is reasonably practicable, all workplace activity relating to the plant or structure including its decommissioning or dismantling is without risks to health or safety.	n/a	n/a

INCIDENT NOTIFICATION (SECTIONS 35-39)

A PCBU must notify the regulator as soon as they become aware of a death, serious injury or illness or dangerous incident that arises out of the conduct of the business or undertaking.

A serious injury or illness means work related injury that results in:

- immediate hospital treatment as an in-patient
- immediate treatment for serious injuries (for example amputation, scalping, a spinal injury, loss of a bodily function or a serious laceration, burn, head injury or eye injury), or
- medical treatment within 48 hours of exposure to a substance.

Trigger	Example
Immediate treatment as an in-patient in a hospital	Admission into a hospital as an in-patient for any duration, even if the stay is not overnight or longer. **IT DOES NOT INCLUDE:** ■ Out-patient treatment provided by the emergency section of a hospital (i.e. not requiring admission as an in-patient) and immediate discharge. ■ Subsequent corrective surgery such as that required to fix a fractured nose.
Immediate treatment for the amputation of any part of the body	Amputation of a limb such as arm or leg, body part such as hand, foot or the tip of a finger, toe, nose or ear.
Immediate treatment for a **serious** head injury	■ Fractured skull, loss of consciousness, blood clot or bleeding in the brain, damage to the skull to the extent that it is likely to affect organ/face function. ■ Head injuries resulting in temporary or permanent amnesia.
Immediate treatment for a **serious** eye injury	Injury that results in or is likely to result in the loss of the eye or total or partial loss of vision. Injury that involves an object penetrating the eye (for example metal fragment, wood chip). Exposure of the eye to a substance which poses a risk of serious eye damage. **IT DOES NOT INCLUDE:** Eye exposure to a substance that merely causes irritation.
Immediate treatment for a **serious** burn	A burn requiring intensive care or critical care which could require compression garment or a skin graft. **IT DOES NOT INCLUDE:** A burn that merely requires washing the wound and applying a dressing.
Immediate treatment for the separation of skin from an underlying tissue (such as degloving or scalping)	Separation of skin from an underlying tissue such that tendon, bone or muscles are exposed (de-gloving or scalping).

Immediate treatment for a spinal injury	Injury to the cervical, thoracic, lumbar or sacral vertebrae including the discs and spinal cord.
Immediate treatment for the loss of a bodily function	Loss of consciousness, loss of movement of a limb or loss of the sense of smell, taste, sight or hearing, or loss of function of an internal organ. **IT DOES NOT INCLUDE:** ■ mere fainting, or ■ a sprain, strain or fracture.
Immediate treatment for serious lacerations	■ Serious lacerations that cause muscle, tendon, nerve or blood vessel damage or permanent impairment. ■ Deep or extensive cuts. ■ Tears of wounds to the flesh or tissues—this may include stitching to prevent loss of blood and/or other treatment to prevent loss of bodily function and/or infection.
Medical treatment within 48 hours of exposure to a substance.	

A PCBU must also notify any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work:

(i) with micro-organisms

(ii) that involves providing treatment or care to a person

(iii) that involves contact with human blood or body substances, or

(iv) that involves handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products.

The following occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:

(i) Q fever

(ii) Anthrax

(iii) Leptospirosis

(iv) Brucellosis

(v) Hendra Virus

(vi) Avian Influenza, or

(vii) Psittacosis.

TREATMENT

'Treatment' means the kind of treatment that would be required for a serious injury or illness and includes 'medical treatment' (i.e. by a registered medical practitioner), treatment by a paramedic or treatment by a registered nurse practitioner.

For more information about the kinds of 'serious' injuries or illnesses that are notifiable contact your local regulator or check out their website.

The regulator must also be immediately notified of any dangerous incident that exposes a person to a serious health or safety risk from immediate or imminent exposure to:

- the uncontrolled escape, spillage or leakage of a substance
- an uncontrolled implosion, explosion or fire
- an uncontrolled escape of gas, steam or a pressurised substance
- an electric shock
- the fall or release from height of any plant, substance or thing
- the collapse, overturning, failure or malfunction of, or damage to, plant that is required to be licensed or registered
- the collapse or partial collapse of a structure, including an excavation or of any shoring supporting an excavation
- the inrush of water, mud or gas into an underground excavation or tunnel
- the interruption of the main system of ventilation to an underground excavation or tunnel, or
- other incidents as stated in the WHS Regulations.

Notice of an incident must be given by the fastest possible means, by telephone or in writing (including electronic means, where available). If notice is given by telephone, the regulator may request follow-up written notice of the incident. This must be provided within 48 hours of the request.

A record of each notifiable incident must be kept by the PCBU for at least five years.

The person with management or control of a workplace at which a notifiable incident has occurred must ensure the site of the incident is not disturbed until an inspector arrives at the site or directs otherwise. This does not prevent any action required to protect a person's health or safety, help someone who is injured or make the site safe.

Further information on notifiable incidents is available on the Safe Work Australia and regulator websites.

PCBUs are responsible for making decisions regarding health and safety, but may not have a full understanding of the finer detail or subtleties of the work or working conditions. It is important that PCBUs obtain information from their workers before making changes or implementing measures which may adversely affect health and safety. It is also important that the workers are informed of those measures and their significance to health and

CONSULTATION WITH WORKERS AND REPRESENTATION OF WORKERS

safety so that they can implement them and also understand the importance of doing so. This requires an ongoing exchange of information between the PCBUs and their workers, directly or through their representatives.

Given the importance of consultation in contributing to work health and safety and the WHS Act prescribes a general duty to consult.

Consultation with workers (sections 47-49)

PCBUs must so far as reasonably practicable consult 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 health and safety. This includes giving workers a reasonable opportunity to express their views or raise issues about work health and safety at the workplace.

Consultation is a collaborative process between PCBUs and their workers. It involves sharing information about work health and safety and ensuring that views of workers are taken into account when making decisions about health and safety at the workplace. It does not require agreement to be reached.

If there is an agreed consultation procedure then the consultation must be in accordance with those procedures.

If an HSR represents workers the consultation must involve the HSR.

A PCBU must consult with workers and take their views into account when:

- identifying hazards and assessing risks arising from work
- proposing changes that may affect the health and safety of workers, and
- whenever specifically required to do so under particular regulations

and when considering making decisions about:

- ways to eliminate or minimise risks
- the adequacy of facilities for workers' welfare at work
- procedures for consulting with workers
- procedures for resolving health and safety issues
- procedures for monitoring the health of workers or workplace conditions, and
- how to provide health and safety information and training to workers.

Views of workers must be taken into account when consulting under these provisions but there is no requirement for agreement to be reached.

Workers who have been consulted under these provisions must be advised of the outcome in a timely manner. There is no particular way this advice must be given—it could for example be given at a 'toolbox' meeting or posted as an intranet news item.

Representation and participation of workers

Workers are entitled to:

- elect a health and safety representative if they wish to be represented by one
- request the formation of a health and safety committee if they wish
- cease unsafe work in certain circumstances (see below for more information)
- have health and safety issues at the workplace resolved in accordance with an agreed issue resolution procedure, and
- not be discriminated against for raising health and safety issues.

Health and Safety Representatives (HSRs)

Any worker can ask the PCBU for whom they are carrying out work to facilitate the election of one or more HSRs for the workplace.

An HSR is elected by a work group to represent the health and safety interests of the work group (and must be a member of that work group). There can be as many HSRs and deputy HSRs as needed after consultation, negotiation and agreement between workers and the PCBU.

Once determined the PCBU must keep a current list of all HSRs and deputy HSRs for the workplace(s) and display a copy at the relevant workplace. A list must also be provided to the regulator.

Work groups (sections 50-59)

A work group is a group of workers who share a similar work situation. For example a work group might consist of all workers in the office part of a manufacturing complex, or it might consist of people of the same trade, or it might consist of all people on the night shift. If agreed workers from multiple businesses can be part of the same work group which might include contractors, labour hire staff, outworkers and apprentices.

A work group is set up for the purposes of electing—and being represented by—one or more HSRs.

If a request is made for the election of an HSR the PCBU must start negotiations with workers within 14 days to determine the:

- number and composition of the work group(s)
- number of HSRs and deputy HSRs, and
- workplace(s) to which the work group(s) apply.

The PCBU must negotiate about work groups with a worker's representative (for example union) if asked by a worker. The PCBU must also notify workers as soon as practicable of the outcome of the negotiations.

The parties to a work group agreement may negotiate to change the size or membership of the work group at any time, for example if it could be re-organised to provide for more effective representation.

Negotiations for the determination and variation of work groups must be aimed at ensuring workers are grouped in a way that most effectively and conveniently enables their WHS interests to be represented and allows an HSR to be readily accessible to each worker in the work group.

If negotiations fail in establishing or varying a work group any person who is a party to the negotiations can request an inspector to assist in deciding the matter (or if the matter involves multiple businesses, to assist the negotiations).

Powers and functions of HSRs (sections 68-69)

HSRs:

- represent their work group members in matters relating to work health and safety at the workplace
- monitor risk control measures put into place at the workplace to protect their work group members
- investigate complaints from their work group members relating to work health and safety, and
- inquire into anything that appears to be a risk to the health or safety of work group members.

In limited circumstances HSRs may represent another work group or work group member for the business or undertaking, that is if:

- there is a serious risk to the health or safety of other workers from an immediate hazard, or
- a worker in another work group asks for their assistance and the HSR for that other work group is not available.

Each HSR must be allowed to spend such time as is reasonably necessary to exercise their powers or perform their functions under the WHS Act. This must be paid time based on the rate they would have otherwise been paid at the time.

In exercising their powers or functions an HSR can:

- inspect the workplace or any area where work is carried out by a worker in the work group
  - at any time after giving relevant notice, or
  - at any time without notice in the event of an incident or any situation involving a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard
- accompany an inspector during an inspection of an area where a work group member works
- be present at an interview with a worker that the HSR represents (with their consent) and the PCBU or an inspector about work health and safety issues
  - if the interview involves more than one worker, only the consent of one of the HSR's work group members is required
- receive information about work health and safety of work group members— but not any personal or medical information that directly or indirectly identifies a worker without the worker's consent
- request a health and safety committee be established, and
- issue a provisional improvement notice (PIN) or direct a person to cease unsafe work in certain circumstances, but only if they have completed the approved training. (Workers

may also cease work in certain circumstances, without direction from an HSR).

Whenever necessary an HSR may request the assistance of any person in relation to their role under the Act. The PCBU is not required to meet the associated costs. Assistants' access to the workplace may be refused on reasonable grounds, in which case the regulator may be asked to appoint an inspector to resolve the access issue (see sections 70(1)(g), 71(3) and 71(6)).

An HSR is not personally liable for anything done or not done in good faith while carrying out their role.

Election and eligibility of HSRs (sections 50, 60-67)

The members of a work group elect their own HSR. All members are entitled to vote in an election. To be eligible for election as a HSR a person must be a member of the work group and not be disqualified from acting as an HSR.

The PCBU must provide any resources, facilities and assistance that are reasonably necessary to carry out the election. Members of a work group decide how the election will be conducted. The election may be conducted with the assistance of a union or other person or organisation, if supported by a majority of work group members.

Elections for a deputy HSR are carried out in the same way.

Elections are not needed when the number of candidates is the same as the number of vacancies.

The term of office for an HSR or deputy HSR is three years. They cease to hold office if:

- they leave the work group
- they are disqualified from being an HSR
- they resign as an HSR by written notice, or
- the majority of members of the group agree the person should no longer represent them and they are removed from office in accordance with the WHS Regulations.

HSRs can be re-elected.

Any person adversely affected by a decision or action of an HSR can apply to have them disqualified in circumstances where an HSR has exercised powers or performed functions improperly or where an HSR has used or disclosed information for purposes not related to their role as an HSR.

Training (section 72)

If requested a PCBU must allow HSRs and deputy HSRs to attend a work health and safety course or training approved by the regulator (approved training).

As soon as practicable and within three months of the request the PCBU must give the HSR(s) paid time off to attend an agreed course and pay the course costs and reasonable expenses. The course must be selected in consultation with the PCBU to ensure it is relevant to the work carried out. If agreement cannot be reached an inspector may assist to resolve the issue.

The PCBU may consult with the person making the request, and may consider the whether there is an entitlement in the circumstances and whether any suggested course is appropriate taking into account all relevant factors. Reasonable time may also be taken to allow the PCBU to re-configure its work arrangements to replace the worker while away

on the course or training.

An obligation to share costs applies if multiple PCBUs are involved. Timely consultation between all relevant PCBUs should be arranged to ensure responsibilities are clear.

HSRs must complete the approved training before they can issue a provisional improvement notice (PIN) or direct a person to cease unsafe work.

Whether or not the HSR has undergone training, the PCBU must provide the HSR with the resources, facilities and assistance that are reasonably necessary to enable them to carry out their functions.

Provisional improvement notices (sections 90-102)

A PIN is a written notice issued by an HSR requiring a contravention against the WHS Act or Regulations to be remedied within a certain period or a likely contravention to be prevented. Only an HSR who has completed the approved training may exercise this power.

Before issuing a PIN the HSR must first consult with the person who is to receive the proposed notice. This could be the PCBU or if the PIN is proposed to be issued to a worker—that worker.

If consultation is unsuccessful a PIN may be issued in writing. It must state:

- that the HSR believes that a provision of the WHS Act or Regulations is being contravened or has been contravened in circumstances that make it likely that the contravention will continue or be repeated
- the section of the WHS Act or Regulations considered to have been contravened and how the section is being or has been contravened, and
- the date (at least eight days from the issue date) by which the contravention must be remedied.

A PIN can include directions on how to remedy a contravention. These directions may refer to a Code of Practice and offer the person a choice of solutions.

A PIN cannot be issued to override an inspector's decision on a matter.

A person issued with a PIN must display it in a prominent place in the workplace, or part of the workplace, at which work is being carried out that is affected by the notice. It is an offence to intentionally remove, destroy, damage or deface the notice, while it is in force.

Within seven days of being issued with a PIN, the affected person (including the PCBU if the person issued with the PIN is a worker) can ask the regulator to have the notice reviewed by an inspector. If no review is sought the PIN must be complied with—that is, the contravention must be remedied within the time allowed or prevented from occurring in the first place (whichever applies).

If a request is made to review the PIN it ceases to have effect until the inspector makes a decision on the review. The inspector must either confirm the PIN (with or without changes) or cancel it. A review may still occur even if the time specified for compliance with the PIN has expired. A confirmed PIN (with or without changes) must be complied with.

The inspector will give a copy of their decision to the person who applied for the review and the HSR who issued the notice.

Worker's right to cease unsafe work (sections 84-89)

If a worker has a reasonable concern about a serious risk to their health or safety from immediate or imminent exposure to a hazard they may cease or refuse to carry out work that would expose them to that hazard.

A worker who ceases work must notify the PCBU as soon as practicable. Workers can be redirected to suitable alternative work at their workplace or at another site until they can resume normal duties.

An affected person including the PCBU, HSR or worker may request an inspector to attend the workplace to assist in resolving an issue relating to the cessation of work.

A worker cannot be discriminated against in their engagement (for example have pay deducted) for exercising their right to cease unsafe work under the WHS Act.

Direct workers to cease unsafe work (sections 85-89)

An HSR who has completed the approved training may direct that unsafe work cease in circumstances where they have a reasonable concern that to continue to carry out the work would expose a work group member to a serious risk to their health or safety, emanating from an immediate or imminent exposure to a hazard.

Before issuing a direction however the HSR must first attempt to resolve the matter with the relevant PCBU. This does not have to happen if the risk is so serious and immediate or imminent that it is not reasonable to consult first. In this case the HSR must consult the PCBU as soon as practicable after giving the direction.

The HSR must inform the relevant PCBU of any direction given by them to workers under the WHS Act. Workers do not need to separately notify the PCBU of the cessation of work in these circumstances. Workers can be redirected to suitable alternative work at their workplace or at another site until they can resume normal duties.

Any affected person may request an inspector to attend the workplace to assist in resolving an issue relating to the cessation of work.

A worker cannot be discriminated against in their engagement (for example have pay deducted) for exercising their rights to cease unsafe work or direct that unsafe work cease under the WHS Act.

Health and safety committees (sections 75-79)

A health and safety committee (HSC) is a formal committee established under the WHS Act to facilitate cooperation between a PCBU and workers in developing and carrying out measures to ensure health and safety at work. This includes health and safety standards, rules and procedures for the workplace.

A PCBU at a workplace must set up an HSC for the workplace within two months of being requested to do so by an HSR for the workplace, or by five or more workers at the workplace.

A PCBU can also establish an HSC on their own initiative.

The constitution of the HSC is determined by agreement between the PCBU and workers at the workplace although some minimum requirements apply.

At least half of the members of an HSC must be workers that have not been nominated by the PCBU. An HSR for the workplace can join the committee if they wish and, if a workplace has more than one HSR, they can choose one or more HSRs to join the committee (if they

consent).

If agreement cannot be reached on how the HSC should be constituted, any party can ask the regulator to appoint an inspector to decide the matter. An inspector may decide the constitution of the HSC or that the HSC should not be established.

An HSC must meet at least once every three months and at any reasonable time at the request of at least half of the members of the committee.

No formal training requirements apply for committee members.

Each committee member must be allowed to spend such time as is reasonably necessary to attend meetings of the committee or carry out functions as a member of the committee. This must be paid time based on the rate they would have otherwise been paid at the time.

Issue resolution (sections 80-82)

Issue resolution procedures apply under the WHS Act 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 discussions between parties.

If the matter is not resolved the relevant parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with an agreed procedure or the default procedure set out in the WHS Regulations.

Relevant parties are:

- the PCBU or their representative
- each PCBU or their representative if the issue involves more than one PCBU
- the HSR for a work group or their representative—if the worker(s) affected by the issue are in a work group, and
- the worker(s) or their representative—if the worker(s) affected by the issue are not in a work group.

The PCBU's representative must not be an HSR and must have an appropriate level of seniority and be sufficiently competent to act as the person's representative.

A worker's representative may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

If the issue remains unresolved, any party may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.

While this process is underway workers may still exercise their right to cease unsafe work and HSRs who have completed the approved training may continue to exercise their powers to issue a PIN or direct that unsafe work cease.

Inspectors will not undertake conciliation or mediation to resolve the issue but may exercise any of their compliance powers under the WHS Act to resolve any underlying work health or safety issues.

Discriminatory, coercive or misleading conduct (sections 104-115)

Anti-discrimination provisions protect workers, prospective workers and others who perform safety-related functions or activities under the WHS Act, or raise health and safety issues or concerns at the workplace.

It is an offence for a person to engage in discriminatory conduct for a prohibited reason in the course of work. A person only commits an offence if the prohibited reason was the dominant reason for the discriminatory conduct.

Discriminatory conduct includes dismissing or refusing to engage a worker, terminating a contract for services with a worker, detrimentally altering the position of a worker or otherwise injuring them in their engagement (for example by demoting them, or reducing their overtime or ordinary hours of work) because they:

- are, have been or propose to be an HSR or member of an HSC
- exercise a right or perform a function as an HSR or HSC member
- undertake, have undertaken or propose to undertake a role under the Act
- exercise, have exercised or propose to exercise (or refrain from exercising) a power under the Act
- assist, have assisted or propose to assist a person to exercise a power or perform a function under the Act
- raise, have raised or propose to raise an issue or concern about work health and safety
- are involved in, have been involved in or propose to be involved in resolving a work health and safety issue, or
- made a complaint or taken other action to get another person to comply with their duties or obligations under the Act.

It is also unlawful to terminate or refuse to enter into a commercial arrangement with another person for any of these reasons.

It is unlawful to engage in, threaten or organise to take any of the above actions, or to ask, authorise, assist or encourage another person to do this.

It is unlawful to organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce the person, or a third person to exercise their rights under the WHS Act in a particular way.

It is unlawful for a person to knowingly or recklessly make a false or misleading representation to another person about their:

- rights or obligations under the Act
- ability to initiate, or participate in, a process or proceeding under the Act, or
- ability to make a complaint or inquiry to a person or body empowered under the Act to seek compliance with the Act.

Offences may be prosecuted by the regulator or alternatively an affected person or their representative may apply to the designated court or tribunal for a civil remedy.

In civil proceedings a person may be found to have engaged in discriminatory conduct for a prohibited reason only if the reason was a substantial reason for the conduct.

Civil proceedings relating to alleged discriminatory conduct must be lodged within a year after the date on which the applicant knew or ought to have known that the cause of action accrued.

In either case a broad range of remedies are available to the designated court or tribunal

including imposition of a penalty or reinstatement.

Alternative anti-discrimination protections may be available under general anti-discrimination or workplace laws. Limits apply however to ensure persons cannot seek multiple remedies in relation to a single complaint.

Further information is available in Safe Work Australia's interpretive guideline on discriminatory, coercive or misleading conduct at www.safeworkaustralia.gov.au.

A WHS entry permit holder appointed under the WHS Act may enter a workplace to:

- inquire into a suspected contravention of the WHS Act that relates to or affects a relevant worker

- inspect employee records or other documents relating to the suspected contravention held by another person, and
- consult or advise relevant workers on work health and safety matters.

A 'relevant worker' is a worker:

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

A WHS entry permit can be issued to a union official who has completed an approved training course and holds a valid and current entry permit under the Commonwealth's Fair Work Act 2009 (Fair Work Act) or the relevant state or territory workplace legislation (whichever applies).

Subject to certain conditions an entry permit allows the holder to inquire into a suspected contravention of the WHS Act and meet with workers to discuss their work health and safety rights and obligations.

Entry must relate to workers they represent or are eligible to represent by law.

A WHS entry permit holder may exercise a right of entry only during the usual working hours at the workplace. There is no right to enter any part of a workplace that is used only for residential purposes.

While exercising the right of entry a WHS entry permit holder must comply with any reasonable request to comply with any work health and safety requirements or any other legal requirement that may apply at the workplace.

A WHS entry permit holder must not contravene a condition of their WHS entry permit.

Permits are valid for three years from the date of issue or cease when the permit holder ceases to be a union official for the relevant union or their permit under the Fair Work Act or a state/territory workplace law expires. A permit must be returned within 14 days of expiry.

WHS entry permit holders must show their WHS entry permit and photographic identification upon request.

Suspected contraventions (sections 117-120, 125-130, 144-146)

A WHS entry permit holder may enter a workplace without prior notice during usual working hours to inquire into a suspected contravention if they reasonably suspect one has or is occurring.

As soon as is reasonably practicable after entry the WHS entry permit holder must advise the relevant PCBU and person with management or control of the workplace of their entry. This is not needed if the notification would defeat the purpose of the entry or unreasonably delay the WHS entry permit holder in an urgent case.

While at the workplace the WHS entry permit holder may exercise a number of powers including:

- inspecting any work system, plant substance or structure relevant to the suspected contravention

- consult with the relevant PCBU and workers in relation to the suspected contravention, and
- require the relevant PCBU to allow the WHS permit holder to inspect and make copies of any document that is relevant to the suspected contravention, if the document is held at the workplace or is accessible from a computer at the workplace.

The PCBU must not, without reasonable excuse, refuse or fail to comply with this request. A PCBU is not required to allow inspection or copying of documents if this would contravene a law of the Commonwealth, State or Territory (whichever applies) for example a law relating to privacy.

The WHS entry permit holder may also warn any person they believe to be exposed to a serious risk to their health or safety emanating from an immediate or imminent exposure to a hazard.

Inspecting employee records or information held by another person—while inquiring into a suspected contravention

If inquiring into a suspected contravention an entry permit holder can only inspect or make copies of:

- 'employee records' that are directly relevant to the contravention, or
- documents that are directly relevant that are not held by that PCBU

if 24 hours' notice of the entry is given. The notice cannot be given more than 14 days before the entry and must be made in accordance with the WHS Regulations. 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.

A notice must include the following:

- so far as is practicable, the particulars of the suspected contravention to which the notice relates
- a description of the 'employee records' and other documents, or of the classes of records and documents, directly relevant to the suspected contravention, that are proposed to be inspected, and
- a declaration stating the prescribed matters.

Consulting workers (sections 121-130)

A WHS entry permit holder may enter a workplace to consult on work health and safety matters with relevant workers who wish to participate in discussions. At least 24 hours' notice must be given to the relevant PCBU before the entry, but not more than 14 days.

General requirements (sections 123-130, 144-148)

A person must not without reasonable excuse:

- refuse or unduly delay a permit holder's entry to a workplace under the WHS Act, or

- intentionally and unreasonably obstruct them from exercising any rights under the WHS Act.

Similarly a WHS permit holder exercising their rights 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.

A person must not do something with the intention of giving the impression—or be reckless as to whether the impression is given—that they can do something under the laws which they cannot.

A person must not use or disclose information or a document obtained in an inquiry into a suspected contravention for a purpose that is not related to the inquiry or rectifying the suspected contravention except in a limited number of circumstances. Disclosure is permitted for example to report concerns to the relevant authorities, assist any subsequent investigation or to lessen or prevent a serious risk to a person's health or safety or a serious threat to public health or safety.

Disputes (sections 141-143)

Any party to a dispute about a right of entry may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the dispute.

Alternatively the dispute may be dealt with by the authority that issued the WHS entry permit. An application to have the dispute resolved may be brought by an affected person or the regulator. The authority may also initiate proceedings itself. The authority may deal with a dispute in any way it determines including mediation, conciliation or arbitration.

Revoking a permit (sections 138-140)

A WHS entry permit may be revoked by the authorising authority for certain reasons including if the permit holder no longer meets the eligibility criteria for holding the permit, contravenes permit conditions or engages in improper behaviour. Upon application the authorising authority can impose additional conditions on the permit, or suspend or revoke the permit.

Role of the regulator (sections 152-154)

The National Compliance and Enforcement Policy (NCEP) sets out the approach work health and safety regulators take to compliance and enforcement under the WHS Act

and Regulations.

Each state, territory and the Commonwealth will continue to have its own regulator to administer the WHS laws in their jurisdiction.

Regulators have a broad range of functions including to:

- monitor and enforce compliance with the WHS Act and WHS Regulations
- provide advice and information on work health and safety to duty holders and the community
- foster a cooperative, consultative relationship between duty holders and the people to whom they owe work health and safety duties, and their representatives
- promote and support education and training on matters relating to work health and safety
- engage in, promote and coordinate the sharing of information to achieve the object of the WHS Act, including the sharing of information with other work health and safety regulators
- conduct and defend legal proceedings under the WHS Act
- collect, analyse and publish statistics relating to work health and safety, and
- promote public awareness and discussion of work health and safety matters in the community.

Power of the regulator to require documents and information (section 155)

The regulator has powers to obtain information by written notice if it reasonably believes a person is capable of giving information, providing documents or giving evidence:

- in relation to a possible contravention of the WHS Act, or
- that will assist in monitoring or compliance.

The written notice must be served on the person requiring them to do one or more of the following:

- provide a signed statement on the required matters within the time and in the manner specified in the notice
- produce the required documents, or
- appear before a person appointed by the regulator on a day, and at a time and place specified in the notice (which must be reasonable in the circumstances), and provide the required information and documents. The person may attend with a legal practitioner.

The regulator may only require a person to appear in person after taking all reasonable steps to obtain the required information by other means.

It is an offence to refuse or fail to comply with a request without reasonable excuse. However a person may refuse to produce a document or information that is subject to legal professional privilege.

While the regulator may compel answers, self-incriminating answers to questions or information provided cannot be used as evidence against an individual in civil or criminal proceedings, other than proceedings arising out of the false or misleading nature of the answer, information or document.

Functions and powers of inspectors (sections 160-162, 171, 172)

Inspectors have the following general functions and powers:

- to provide information and advice about how to comply with the WHS Act and Regulations
- to help resolve work health and safety issues at workplaces
- to help resolve issues about entry to workplaces by assistants to HSRs and WHS entry permit holders under the WHS Act
- to review disputed PINs
- to require compliance with the WHS Act by issuing notices
- to investigate contraventions and assist to prosecute offences, and
- to attend coronial inquests in respect of work-related deaths and examine witnesses.

Inspectors are subject to the regulator's directions in the exercise of their compliance powers.

In performing their functions and exercising powers an inspector at a workplace may require a person to answer their questions including by providing information about how they can access particular relevant documents. The inspector may also require a person who has custody of, or access to, a document, to give it to the inspector while the inspector is at the workplace or within a specified period. This requirement must be made by written notice unless the document is provided voluntarily or circumstances require the inspector to have immediate access to the document.

The inspector may make copies of or take extracts from a document given to them or keep the document for the period the inspector considers necessary. While in the inspector's custody it must be made available to the person who produced the document, the document's owner, or a representative of either, at all reasonable times.

It is an offence for a person to refuse or fail to comply with the inspector's request without reasonable excuse. However the person may refuse to produce a document or information that is subject to legal professional privilege.

While inspectors may compel answers self-incriminating answers to questions or information provided cannot be used as evidence against an individual in civil or criminal proceedings, other than proceedings arising out of the false or misleading nature of the answer, information or document.

Warning to be given (section 173)

An inspector may obtain and use information voluntarily given to them in their official capacity by any person.

If a person is however required to answer a question or provide information or a document as explained above the inspector must first:

- identify themselves to the person as an inspector by producing their inspector's identity card or in some other way
- warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence
- warn the person that they are not excused from answering a question or providing information or a document on the ground that they may incriminate themselves, and
- advise the person that legal profession privilege may be claimed.

It is not an offence for a person to refuse to cooperate on grounds that they may incriminate themselves if the inspector has not first given them the required warning.

Power to require name and address (section 185)

An inspector may require a person to provide their name and residential address if:

- the inspector finds them committing an offence against the WHS Act
- the inspector finds them in circumstances that leads the inspector to reasonably believe they have committed an offence against the WHS Act, or
- the inspector reasonably believes that the person may be able to assist in the investigation of an offence against the WHS Act.

In making the request the inspector must explain the reasons for the requirement and warn the person that it is an offence to refuse or fail to comply without reasonable excuse.

If the inspector reasonably believes that the name or residential address is false they may require the person to provide further evidence as to its correctness.

It is an offence for a person to fail to comply with these requirements without reasonable excuse.

Powers of entry for inspectors (sections 163-166)

In performing their functions and exercising powers an inspector may enter a workplace or a suspected workplace at any time with or without the consent of the person with management or control. If it is not a workplace they must leave immediately unless they are authorised by a search warrant to be there or the person with management or control consents. They may also pass through places used for residential purposes at a reasonable time if it is the only known way to access a workplace.

An inspector must show their identification on request.

An inspector must take all reasonable steps to advise the relevant PCBU, person with management or control of the workplace and any relevant HSRs they have entered the workplace as soon as practicable. This is not needed if it would defeat the purpose of entry or cause unreasonable delay.

An inspector entering a workplace can:

- inspect, examine and make inquiries
- inspect, examine and seize anything, including documents
- bring and use any equipment or materials they may need
- take measurements, conduct tests, and make sketches or recordings (for example

photographs, films, audio and video), and

- take and remove samples for analysis.

An inspector can require a person at a workplace to give them reasonable help to do these things. A person asked to assist must not, without reasonable excuse, refuse or fail to comply.

Inspectors may be accompanied by other persons including an interpreter to assist them, if this is considered to be necessary.

Search warrants (sections 167-169)

An inspector may apply to a magistrate or other person authorised to issue warrants for a search warrant. A search warrant may be issued if there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, evidence of an offence against the WHS Act at the place.

The warrant states the suspected offence, the evidence that may be seized, the time that the place may be entered, the date that the warrant ends and that the inspector may use reasonable help and force to enter the place and exercise their powers.

Before executing the warrant the authorised inspector or their assistant must announce they are authorised by the warrant to enter the place and give anyone at the place an opportunity to let them in. This is not required if the inspector believes on reasonable grounds that immediate entry is needed to ensure a person's safety or to avoid frustrating the execution of the warrant.

If the person with management or control of the place is present the inspector must show their identification and provide a copy of the search warrant.

Enforcement measures

Improvement notices (sections 191-194)

An improvement notice is a written notice issued by an inspector requiring a contravention against the WHS Act or Regulations to be remedied within a certain period or a likely contravention to be prevented (that is, if there are circumstances that make it likely that a contravention will continue or be repeated).

An inspector may issue an improvement notice requiring a person to remedy the contravention, prevent a likely contravention from happening or remedy the things or operations causing the contravention or likely contravention.

The notice must state the inspector's belief about the contravention or likely contravention, identify the provision the inspector believes is being or has been contravened, how the provision is being or has been contravened and a reasonable date by which to fix the contravention.

An improvement notice may also include directions and/or recommendations about how to fix or prevent a contravention.

A person issued with an improvement notice must comply with the notice.

A person issued with an improvement notice may seek to extend the compliance period for the notice, but only if the period has not ended.

Prohibition notices (sections 195-197)

A prohibition notice is a notice issued by an inspector prohibiting an activity at a workplace from continuing or being carried out in a specific way.

An inspector may issue a prohibition notice if they reasonably believe the activity involves a serious risk to a person's health or safety from an immediate or imminent exposure to a hazard.

The notice is issued to the person with control over the activity. It may include directions on how to remedy the risk and remains in place until an inspector is satisfied the risk has been fixed.

At first the notice may be given orally but must be confirmed by written notice issued to the person as soon as practicable.

A person issued with a prohibition notice must comply with the notice (including any notice given orally). It remains in force until an inspector is satisfied the underlying risk has been fixed—see also the section on reviews.

Non-disturbance notices (sections 198-201)

A non-disturbance notice is a written notice issued by an inspector requiring a person to with management or control of a workplace to preserve a 'notifiable incident' site or prevent disturbance of a particular site (including the operation of plant) in certain circumstances. It may only be issued if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of their compliance powers.

A notice may require the person to preserve the site or prevent disturbance for up to seven days, and must include the measures to be taken to do so.

One or more subsequent non-disturbance notices may be issued to a person if an inspector considers this necessary.

A non-disturbance notice does not prevent any action required to protect a person's health or safety, help someone who is injured or make the site safe.

A person issued with a non-disturbance notice must comply with the notice unless they have a reasonable excuse for not doing so.

Display of notices (section 210)

A person issued with a notice must as soon as possible display a copy of the notice in a prominent place at or near the workplace where work affected by the notice is being carried out.

It is an offence to intentionally remove, destroy, damage or deface a notice that is required to be displayed while the notice is in force.

Note that the operation of the notice may be stayed if the decision to issue the notice is under formal review (see below).

Injunctions (section 215)

The regulator may apply to a court for an injunction to require or compel a person to comply with a notice, or to restrain them from contravening a notice. An injunction can be sought

even if separate proceedings are underway about a matter to which the notice relates.

Infringement notices (section 243)

Infringement notices ('on the spot' fines) may be issued by inspectors as an alternative to prosecution for prescribed offences.

Remedial action (sections 211-213)

The regulator may take any reasonable remedial action to make a workplace or situation safe if a person fails to take reasonable steps to comply with a prohibition notice. To do so it must give written notice to the person of the regulator's intention and information about the owner's or person's liability for the costs of that action.

The regulator may also take remedial action if a prohibition notice cannot be issued because the person with management or control of the workplace cannot be found.

Costs of remedial action may be charged to the person who was issued with the initial prohibition notice or would have been, had they been found.

Enforceable undertakings (sections 216-222)

A person may give the regulator an undertaking about a contravention or alleged contravention by the person, other than a Category 1 offence.

If accepted no enforcement proceedings may be brought (or continued) against a person in relation to a matter covered in a WHS undertaking, providing the WHS undertaking has been completely discharged.

The giving of a WHS undertaking is not considered to be an admission of guilt.

The regulator must consider any undertaking, taking into account guidelines published on the acceptance of WHS undertakings, and provide the person with a written notice of its decision to accept or reject it (including reasons).

A WHS undertaking takes effect and becomes enforceable when the regulator's decision to accept it is given to the person or as specified in the decision.

A person who has made a WHS undertaking may withdraw or vary the undertaking with the written agreement of the regulator.

If a WHS undertaking is contravened the regulator may apply to the designated court for a remedy. In addition to imposing a penalty, the court may make orders directing compliance with the WHS undertaking or discharging the undertaking altogether. Additionally the court may order the person to pay the costs of the proceedings plus the regulator's reasonable costs of monitoring compliance with the WHS undertaking in the future.

If a WHS undertaking is contravened the regulator may also seek to prosecute the underlying contravention or alleged contravention of the Act to which the WHS undertaking relates.

Review of decisions (sections 223-229)

Certain decisions made by inspectors and the regulator can be reviewed. The WHS Act outlines which decisions can be reviewed and who can apply to have them reviewed. These are decisions that relate to:

- the failure to commence negotiations for work groups
- union right of entry permits
- training of health and safety representatives
- provisional improvement notices issued by HSRs
- forfeiture and return of goods or things
- issue of improvement, prohibition or non-disturbance notices and subsequent notices
- variation or cancellation of notices, and
- extension of time to comply with improvement notices.

Internal review

Inspectors' decisions are initially subject to internal review by the regulator. Applications must be brought within the time allowed or a longer period permitted by the regulator. The time allowed is:

- in relation to a decision to issue an improvement notice—the period specified in the notice for compliance or 14 days, whichever is the lesser, and
- in any other case, 14 days.

The internal reviewer cannot be the person responsible for the initial decision. The internal reviewer must make a decision within 14 days after receiving a valid application, although additional time is allowed if further information is required.

The internal reviewer must confirm the initial decision, vary it, or set it aside in favour of another course of action. A written decision must be sent to the applicant as soon as practicable.

The initial decision is taken to be confirmed if the internal reviewer does not make a review decision in the time allowed, or the applicant fails to provide any additional information required by the reviewer within time.

External review

If a person is dissatisfied with the internal review decision, they may apply for an external review of that decision within the time allowed.

Additionally prescribed decisions made under the WHS Act by the regulator are also externally reviewable.

The application must be made:

- if the decision was to forfeit a thing—within 28 days of the day the decision first came to the applicant's notice
- in any other case—within 14 days after the day the decision first came to the applicant's notice, or
- if the regulator is required by the external review body to give the applicant a statement of reasons—within 14 days after the day the statement is provided.

In general the designated tribunal's practices and procedures will apply to the external review.

Stays of reviewable decisions

If an application for review is made this generally imposes a stay on the operation of the decision until there is an outcome.

There is no automatic stay however of a decision to issue a prohibition notice or a non-disturbance notice. In this case the reviewer may stay the decision on its own initiative or upon application. The reviewer must make the decision on an application for a stay within one working day after receiving the application, otherwise the application is taken to have been granted.

A stay of a decision pending internal review operates until the time allowed for making an external review expires or an application for external review is made, whichever is earlier.

Proceedings for an offence against the Act may only be brought by the regulator or an inspector acting with the written authorisation of the regulator, as well as the Director of Public Prosecutions.

OFFENCES AND PENALTIES

Health and safety duty offences

The WHS Act provides for three categories of criminal offences for breach of health and safety duties. The maximum penalties are different depending on the category of the offence and whether the offender is an individual (e.g. a worker, or a PCBU), an officer (as defined) or a body corporate.

Category 1 – a duty holder, without reasonable excuse, engages in conduct that recklessly exposes a person to a risk of death or serious injury or illness.

Category 2 – a duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness.

Category 3 – a duty holder fails to comply with a health and safety duty.

Volunteers are not liable for a failure to comply with a health and safety duty except in their capacity as a worker (section 28) or other person at a workplace (section 29).

An unincorporated association is not liable for prosecution although its officers (except volunteers) may be prosecuted for a failure to comply with an officer's duty (section 27). Its members may owe duties in their capacities as workers (section 28) or other persons at a workplace (section 29).

Procedure if prosecution is not brought (section 231)

If an individual (complainant) considers a Category 1 or 2 offence has occurred but no prosecution has been brought in the period six to twelve months after the alleged offence, they can make a written request to the regulator to bring a prosecution.

The regulator must respond to the request within three months after receiving the request. It must advise on the status of the investigation and, if complete, whether a prosecution has been or will be brought including reasons. The regulator must also notify the alleged offender of these matters.

If the regulator decides not to prosecute the complainant may make a written request that the regulator refer the matter to the Director of Public Prosecutions. The matter must be referred within one month of the request being made.

The Director of Public Prosecutions must consider the matter and advise in writing the regulator within one month of whether a prosecution should be brought. The regulator must provide the complainant and alleged offender with a copy of the advice or a summary of the advice. If the work health and safety regulator declines to follow any advice to prosecute it must provide written reasons for its decision.

Penalties for breach of health and safety duty offences

Type Order	Information		

	Corporation	Individual as PCBU or officer	Individual as worker or other
Category 1	$3 million	$600 000, five years in jail or both	$300 000, five years jail or both
Category 2	$1.5 million	$300 000	$150 000
Category 3	$500 000	$100 000	$50 000

Alternative penalty options

In addition to imposing a penalty courts may impose alternative remedies including:

- adverse publicity orders
- restoration orders
- work health and safety project orders
- court-ordered work health and safety undertakings
- injunctions, and
- training orders.

Other offences

There are a number of other offences under the WHS Act that relate to specific requirements and carry their own individual penalties.

Offences in relation to incident notification (sections 38, 39)

It is an offence to:

- fail to notify the regulator of a 'notifiable incident' (section 38)
- fail to keep a record of a 'notifiable incident' for the prescribed period (section 38)
- fail to preserve an incident site until an inspector arrives (section 39).

Offences in relation to authorisations (sections 41-45)

It is an offence to:

- carry on a business or undertaking at an unauthorised workplace, if it is required to be authorised (section 41)
- use unauthorised plant, equipment and substances at a workplace, if there is a requirement that it be authorised (section 42)
- carry out work without the required licence, permit or authorisation (section 43)
- carry out unsupervised work where supervision by a person with prescribed qualifications or experience is required (section 44)

- not comply with the conditions of any licence, permit or authorisation (section 45).

Offences in relation to consultation (sections 46, 47)

It is an offence to:

- not consult with other duty holders on work health and safety matters as required (section 46)
- not consult with workers on work health and safety matters as required (section 47).

Offences in relation to the establishment of work groups (sections 52-57)

It is an offence to:

- fail to negotiate with workers or their representative regarding the formation of work groups at a workplace (sections 52, 56)
- fail to notify workers of the outcome of negotiations regarding the formation of work groups at a workplace (sections 53, 57).

Offences in relation to health and safety representatives (sections 61, 70-74, 97, 99)

It is an offence to:

- fail to consult with an HSR on work health and safety matters as required
- fail to provide an HSR with access to information the person has relating to hazards affecting their work group members and work health and safety of work group members
- fail to allow an HSR to attend interviews that they are entitled to attend as representatives
- fail to provide resources, facilities and assistance that are reasonably necessary for the election of HSRs, to allow HSRs to carry out their health and safety duties
- prevent an HSR from accompanying an inspector during an inspection of a place that affects work health and safety of work group members
- deny a person assisting an HSR access to the workplace in accordance with entitlements
- fail to allow an HSR time off with pay that is reasonably necessary to attend to their health and safety duties
- refuse to allow an HSR to attend an approved training course they are entitled to attend
- fail to keep an up-to-date list of HSRs at the workplace and ensure it is readily accessible to all workers
- fail to display a provisional improvement notice (section 97)
- contravene a provisional improvement notice (section 99).

Offences in relation to health and safety committees (sections 75, 79)

It is an offence to:

- fail to establish an HSC within two months of being requested to do so (section 75)

- fail to allow members of the committee time off with pay that is reasonably necessary to attend committee meetings and carry out functions as a committee member (section 79).

Offences in relation to discriminatory, coercive or misleading conduct (sections 104-108)

It is an offence to:

- engage in discriminatory conduct for a reason prohibited under the WHS Act (section 107)
- organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce that person, or a third person, to exercise or not exercise a power or perform or not perform a function under the WHS Act (section 108)
- knowingly or recklessly make a false or misleading representation to another person regarding their rights, obligations or abilities under the WHS Act (section 109).

Part 6 of the WHS Act also enables a person affected by discriminatory, coercive or misleading conduct to initiate civil proceedings for a civil remedy.

Offences in relation to the regulator and inspectors (sections 155-190)

It is an offence to:

- refuse or fail to answer questions and provide information and documentation requested by the regulator without reasonable excuse (section 155)
- refuse or fail to assist an inspector in the performance or their compliance powers without reasonable excuse (section 165)
- refuse or fail to comply with an inspector's request to answer questions or produce a document without reasonable excuse (section 171)
- tamper with a thing the access to which has been restricted by an inspector (section 177)
- refuse or fail to comply with a direction from an inspector, including refusing to provide one's name and address (section 185)
- intentionally hinder or obstruct an inspector while they are carrying out their duties, or to induce or attempt to induce another person to do so (section 188)
- impersonate an inspector (section 189)
- assault, threaten or intimidate an inspector or a person assisting an inspector (section 190)
- fail to comply with an improvement notice (section 193)
- fail to comply with a prohibition notice (section 197)
- fail to comply with a non-disturbance notice (section 200)
- intentionally remove, destroy, damage or deface a notice required to be displayed (section 210)
- fail to comply with a WHS undertaking (section 219)
- fail to comply with a court order (section 242)
- give false or misleading information in complying or purportedly complying with the WHS Act (section 268)

- disclose confidential information obtained while exercising a power or function under the WHS Act (other than in relation to a permit holder entry to a workplace) (section 271)
- impose a levy or charge on a worker for anything done or provided in relation to work health and safety (section 272).

Civil penalty provisions in relation to WHS entry permit holders (sections 118-151)

Part 7 is unique in that there are no criminal offences, only civil penalty provisions consistent with workplace relations laws. Generally the following prohibitions attract a maximum civil penalty of $10,000 in the case of an individual and $50,000 in the case of a body corporate.

A person must not:

- refuse or fail to provide documentation or information relating to a suspected breach of the WHS Act that a WHS entry permit holder is entitled to inspect (section 118)
- refuse or unduly delay, or intentionally and unreasonably hinder or obstruct entry to a workplace by an entry permit holder (sections 144, 145).

A WHS entry permit holder must not:

- contravene a condition of the WHS entry permit (section 123)
- enter a workplace unless they also hold an entry permit under the Fair Work Act 2009 (Cth) or the relevant state or territory industrial relations permit (section 124)
- fail to have the work entry permit available for inspection (section 125)
- enter the workplace outside normal working hours and fail to comply with any reasonable request from the PCBU or person with management or control of the workplace (section 126)
- fail to comply with any reasonable request to comply with work health and safety requirements at the workplace (section 128)
- enter any part of the workplace that is only used for residential purposes (section 129)
- intentionally and unreasonably delay, hinder or obstruct any person or disrupt work at the workplace (section 146)
- give the impression that the taking of some action is authorised under the WHS Act when it is not (section 147)
- disclose information or a document about a suspected health and safety breach for a purpose that is not related to an inquiry (section 148)
- fail to return the permit to the authorising authority within 14 days of the permit expiring being revoked or suspended (section 149).

It is unlawful for a union to:

- fail to notify the industrial registrar if its entry permit holder resigns and leaves the union, or the entry permit holder has previously had a permit cancelled or suspended, or the union ceases to be a registered organisation (section 150).

Authorisations (for example licences, permits and registrations) are required for certain types of work, some workplaces and the use of some plant.

Workplaces (section 41)

The WHS Regulation requires some workplaces (for example major hazard facilities) to

AUTHORISATIONS

be authorised. A person must not conduct a business or undertaking, or direct or allow a worker to carry out work, if the workplace is not authorised in accordance with the WHS Regulations.

Plant and Substances (section 42)

A PCBU must not direct or allow a worker to use plant or a substance if the Regulations require it or its design to be authorised and it is not.

Under the WHS Regulations, the following items of plant require registration of their design:

- pressure equipment, other than pressure piping, 'heritage boilers'
- gas cylinders covered by Part 1.1 of AS 2030.1
- tower cranes, including self-erecting tower cranes (except cranes or hoists that are manually powered, scissor lifts, vertically moving platforms and tow trucks)
- lifts, including escalators and moving walkways
- building maintenance units
- hoists with a platform movement exceeding 2.4 metres, designed to lift people
- work boxes designed to be suspended from cranes
- amusement devices covered by section 2.1 of AS 3533 (except class 1 structures, playground devices, water slides, wave generators, sealed inflatable devices and inflatable devices that do not use a non-return valve)
- concrete placement units with delivery booms
- prefabricated scaffolding and prefabricated formwork
- boom type elevating work platforms
- gantry cranes with a safe working load greater than 5 tonnes, or bridge cranes with a safe working load of greater than 10 tonnes, and any gantry crane or bridge crane which is designed to handle molten metal or Schedule 11 hazardous chemicals
- vehicle hoists
- mast climbing work platforms
- mobile cranes with a rated capacity of greater than 10 tonnes.

Under the WHS Regulations the following items of plant and equipment are required to be registered:

- certain boilers and pressure vessels
- tower cranes, including self-erecting tower cranes (excluding cranes and hoists that are manually powered)
- lifts, including escalators and moving walkways
- building maintenance units
- amusement devices covered by section 2.1 of AS 3533 (except class 1 structures, playground devices, water slides, wave generators, sealed inflatable devices and inflatable devices that do not use a non-return valve)
- concrete placement units with delivery booms
- mobile cranes with a rated capacity of greater than 10 tonnes.

Work (section 43)

A PCBU must not direct or allow a worker to carry out work if it is required to be done by an authorised person and the worker is not authorised. Under the WHS Regulations, the following high risk work must only be performed by people who have been authorised (in essence licensed) to carry out that particular type of work:

- scaffolding
- dogging and rigging
- crane and hoist operation
- operating reach stackers
- forklift truck operation, and
- pressure equipment operation.

Prescribed qualification and experience (section 44)

The WHS Regulations require the following types of work to be carried out only by, or supervised by a person with prescribed qualifications or experience. Note also that other legislation may include licensing, registration or similar requirements for some occupations.

DIVING:

- general diving work (regulations 171 and 177 WHS Regulations)
- incidental diving work (regulation 172 WHS Regulations)
- limited scientific diving work (regulation 173 WHS Regulations)
- high risk diving work (regulation 183 and 184 WHS Regulations)

PLANT:

- maintenance, repair, inspection and testing of registered mobile cranes and tower cranes (regulation 235 WHS Regulations)
- maintenance, repair, inspection and testing of amusement devices (regulations 240 and 241 WHS Regulations)
- verification of plant design (regulation 252 WHS Regulations)

MANAGEMENT OF ASBESTOS:

- identification of asbestos at a workplace (regulation 422 WHS Regulations)

ASBESTOS RELATED WORK:

- air monitoring of the work area where asbestos related work is being carried out (regulation 482 WHS Regulations)

IN THE CASE OF ASBESTOS REMOVAL WORK, THE WHS REGULATIONS REQUIRES THE:

- removalist to be licensed (regulation 458 WHS Regulations)
- nominated asbestos removal supervisor to be competent
- asbestos removal worker to hold certification in relevant units of competency (regulation 460 WHS Regulations)

- clearance inspection for non-friable asbestos removal work to be undertaken only by competent person (regulation 473 WHS Regulations)
- clearance certificate in relation to non-friable asbestos removal work to be issued only by a competent person (regulation 474 WHS Regulations)
- air monitoring during friable asbestos removal work to be undertaken only by a licensed asbestos assessor (regulation 489 WHS Regulations)
- clearance inspection for friable asbestos removal work to be undertaken only by a licensed asbestos assessor (regulation 489 WHS Regulations)
- clearance certificate in relation to friable asbestos removal work to be issued only by a licensed asbestos assessor (regulation 489 WHS Regulations).

Authorised means authorised or approved by a licence, permit, registration or other authority as required by the WHS Regulations.

Dangerous incident means an incident in a workplace that exposes a worker or any other person to a serious risk to health and safety from an immediate hazard or one about to happen, for example a spillage, explosion or electric shock.

GLOSSARY AND MORE INFORMATION

Fair Work Act means the (Cth) Fair Work Act 2009.

Health and safety duty means a duty relating to health and safety imposed in Part 2 of the WHS Act.

Inspector means an inspector appointed under Part 9 of the WHS Act.

Internal reviewer means a person appointed by the regulator to review decisions made by inspectors.

Notifiable incident means an incident involving the death, serious injury or illness of a person, or a dangerous incident that is notifiable under Part 3 of the WHS Act.

Official of a union means a person who holds an office in, or is employed by a registered union.

Union means:

- an employee organisation that is registered, or taken to be registered, under the Fair Work (Registered Organisations) Act 2009 (Cth)
- an employee organisation under the equivalent state or territory workplace laws, or
- an association of employees or independent contractors, or both, registered as such under a state or territory industrial law.

WHS entry permit means a permit issued to a union official under Part 7 of the WHS Act, allowing them to enter a workplace to inquire into a suspected contravention of the WHS Act or as prescribed.

WHS undertaking means a written undertaking given by a person (often the PCBU) to the regulator relating to a breach or alleged breach of the WHS Act.

More information

For further information visit your regulator's website and www.safeworkaustralia.gov.au.

THIS GUIDE PROVIDES INFORMATION TO THE MODEL WORK HEALTH AND SAFETY ACT.